

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

**C.R.P. (PD) No. 4753 of 2017
and
C.M.P. No. 22365 of 2017**

Lakshmikanthan

... Petitioner

-VS-

1. Kumaragurubaran

2. Jothi Asari

3. G.Ramalingam

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the order dated 16.08.2017 passed in I.A. No. 267 of 2017 in O.S. No. 65 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr. R.Muralidharan

For Respondents : Mr. R.Gururaj

ORDER
(The case has been heard through video conference)

The Civil Revision Petition has been filed seeking to set aside the order dated 16.08.2017 in I.A. No. 267 of 2017 in O.S. No. 65 of 2014 passed by the Principal District Munsif Court, Cuddalore.

2. The Learned Counsel for the Petitioner would submit that the Petitioner is the First Defendant in O.S. No. 65 of 2014 filed by the Respondents against him and three others seeking for a declaration that the suit property is a public street and also for a consequential relief of permanent injunction restraining the Petitioner and one N.Murugan and their men from using and enjoying the suit property as public street. He would further submit that in respect of the same property, the Petitioner had earlier filed a suit in O.S. No. 335 of 1992 against the District Collector, South Arcot before the Principal District Munsif Court, Cuddalore seeking for a declaration that the suit property belongs to him and that suit was dismissed by order dated 29.04.1994. He would further submit that however, on First Appeal in A.S. No. 138 of 1994 before the Sub Court, Cuddalore, the order dated 29.04.1994 in O.S. No. 335 of 1992 was set aside and the Appellate Court had declared that the Petitioner is the owner of the suit property and thereby, the declaration has become a

judgment in rem in favour of the Petitioner, whereas the Respondents have filed the present suit in O.S. No. 65 of 2014 seeking for a declaration that the same suit property is a public street and also sought for a injunction restraining the Petitioner from using the suit property. He would further submit that since the suit in O.S. No. 65 of 2014 was barred by the principles of res judicata, the Petitioner has filed an application in I.A. No. 267 of 2017 under Order XIV Rule 2 and Section 151 of the Code of Civil Procedure, 1908, seeking to take the ground of res judicata as preliminary issue in the suit, whereas the Trial Court without properly analyzing the materials on record, had dismissed that application. Against which the present Civil Revision Petition has been filed. He would reiterate that the order obtained in favour of the Petitioner in A.S. No. 138 of 1994 before the Sub Court, Cuddalore operates as judgment in rem in favour of the Petitioner and the Trial Court had erroneously dismissed the application without taking the ground of res judicata as a preliminary issue.

3. Per contra, the Learned Counsel for the Respondents would submit that the Petitioner had earlier filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, in respect of the very same averments and one of the ground raised in that application was res judicata. He would further submit that the Trial Court considered and had dismissed the earlier application

filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, but the Petitioner did not challenged that order. He would further submit that when the case was at the stage of cross examination of P.W.1 after the proof affidavit of P.W.1 has been filed, the present application in I.A. No. 267 of 2017 has been filed. He would further submit that affidavit filed in support of I.A. No. 267 of 2017 is bereft of details and nowhere in the petition, the earlier decree and the description of the property was mentioned and thereby, the Trial Court rightly finding that the Petitioner has not adduced sufficient evidence to satisfy the ingredients of Section 11 of the Code of Civil Procedure, had dismissed I.A. No. 267 of 2017. He would further submit that the Trial Court has also taken into consideration that the proof affidavit of P.W.1 was filed on 02.03.2017 and Ex.A1 to Ex.A26 were marked and only when the case was posted to 07.03.2017 for cross examination of P.W.1, the application has been filed. He would further submit that the Trial Court has also held that the application has been filed only with a malafide intention to stall the trial of the suit. He would further submit that the Petitioner taking advantage of this Civil Revision Petition, had protracted and delayed the trial and thereby, he would pray that the Civil Revision Petition may be dismissed.

4. Heard the Learned Counsels for both sides and perused the materials placed on record.

5. A perusal of the records shows that nothing had been averred in the affidavit filed in support of I.A. No. 267 of 2017 with regard to the earlier suit in O.S. No. 335 of 1992 or the description of the property. As rightly stated by the Learned Trial Judge, the application has been filed only with a malafide intention to stall the trial. Further, the Trial Court has also held that the Petitioner has to adduce evidence to satisfy the ingredients of Section 11 of the Code of Civil Procedure, 1908, which has not been done in this case.

6. This Court finds that there is no infirmity in the order dated 16.08.2017 in I.A. No. 267 of 2017 in O.S. No. 65 of 2014 passed by the Principal District Munsif Court, Cuddalore. The Civil Revision Petition has no merits and has to be dismissed. However, liberty is granted to the Petitioner to raise all his grounds during the course of trial, if necessary. Since the suit is of the year 2014, a direction is issued to the Principal District Munsif Court, Cuddalore to give priority to this case and complete the trial in O.S. No. 65 of 2014 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this Order.

7. With the above observations, the Civil Revision Petition stands disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.04.2021

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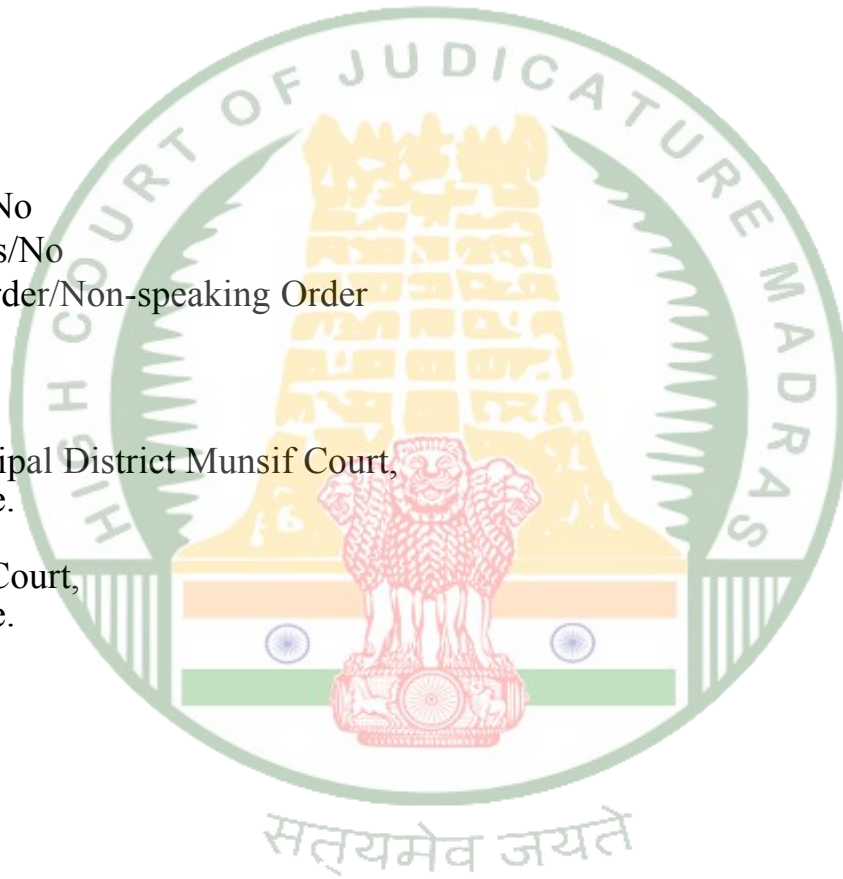
Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Principal District Munsif Court,
Cuddalore.
2. The Sub Court,
Cuddalore.



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A.D. JAGADISH CHANDIRA, J.

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