

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. (PD) No.2435 of 2012

&

M.P.No.1 of 2012

1. S.C.Prakash

2.K.Somasundaram

... Petitioners

Vs

1. S.Thirunavukarasu

2. Amirthavalli

3. T.Kesavan

4. Chandran

5. K.Baskar

6. D.Nallsamy

... Respondents

Civil Revision is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.03.2012 and made in IA No.32 of 2012 in I.P.No.25 of 2010 on the file of the II Additional Subordinate Judge, Erode.

For Petitioners : Mr.M.Guruprasad

For Respondants : Mr.G.Ethirajulu for R3 to R6

ORDER

This memorandum of Civil Revision has been directed against the fair and decretal order dated 19.03.2012 and made in I.A.No.32 of 2012 in the petition in I.P.No.25 of 2010 on the file of the II Additional Subordinate Judge, Erode. The revision petitioners herein are the petitioners in I.P.No.25 of 2010, whereas the respondents are the respondents therein.

2. The petitioners had filed and indigent petition in I.P.No.25 of 2010 on the file of the II Additional Subordinate Judge, Erode as against the respondents herein to adjudge the first respondent as "Insolvent" and to set aside the three sale deeds bearing Document Nos.2700, 2686 and 2687 of 2010 dated 09.04.2010, which are said to have been executed by the respondents 1 and 2 in favour of the respondents 3 to 6 and order the schedule mentioned properties to be vested with an Official Receiver, Erode to administer the same for proper distribution among the creditors and grant such other further relief as the Court may deem fit and proper.

3. This petition was resisted by the third respondent. After examination of the witnesses on behalf of both parties and when the suit was posted for advancing arguments on either side, the revision petitioners had come forward with an application in I.A.No.32 of 2012 under Order 7 Rule 14(3) and Section

151 of the Code of Civil Procedure to condone the delay in production of the document dated 07.10.2010, which is specified in the petition and receive the same as a documentary evidence.

4. This petition was contested by the third respondent by filing his counter statement, which was adopted by the respondents 4 to 6. After hearing both sides, the learned II Additional Subordinate Judge, Erode had proceeded to dismiss that application with the cost of the respondents.

5. Having been aggrieved by the impugned order dated 19.03.2012, present revision petition is filed, by the petitioner.

6. Heard the learned counsel for the revision petitioners and the learned counsel for the respondents.

7. In the affidavit filed in support of the petition, the petitioner herein has stated that while examining the evidences and marking the document, a sale deed dated 07.10.2010 was omitted to be marked and hence unless the document is received as a documentary evidence, the petitioner would be put in to great hardship.

8. On the other hand, it was argued that there was lack of due diligence on the part of the petitioner and if the petitioner had real intention to produce the document, it should have been produced at the earliest point of time. As argued by the learned counsel for the respondent, the averments of the indigent Original Petition in I.P.No.25 of 2010 does not disclose the existence of this document. Under this circumstance, the learned counsel for the respondent has also argued that the petitioner has never disclosed the fact as to how far this document dated 07.10.2010 was having nexus with the petition in I.P.No.25 of 2010.

9. This Court has carefully perused the averments of the grounds of revision along with the impugned order. After careful consideration, this Court is able to find that the petition itself is devoid of any merit. Mr.Guruprasad, learned counsel has also submitted that he will implead one Palanisamy in the indigent petition in I.P.No.25 of 2010 and therefore, he has urged that the petition might be disposed of after giving an opportunity to the petitioner to implead one Palanisamy in the indigent petition.

10. This Court has considered the submissions of Mr.Guruprasad and found that if really the important issue in this case is settled by the impleadment of the above said Palanisamy, then this Court would not stand in the way and therefore, the revision petitioners are at liberty to approach the Court below to implead the said Palanisamy.

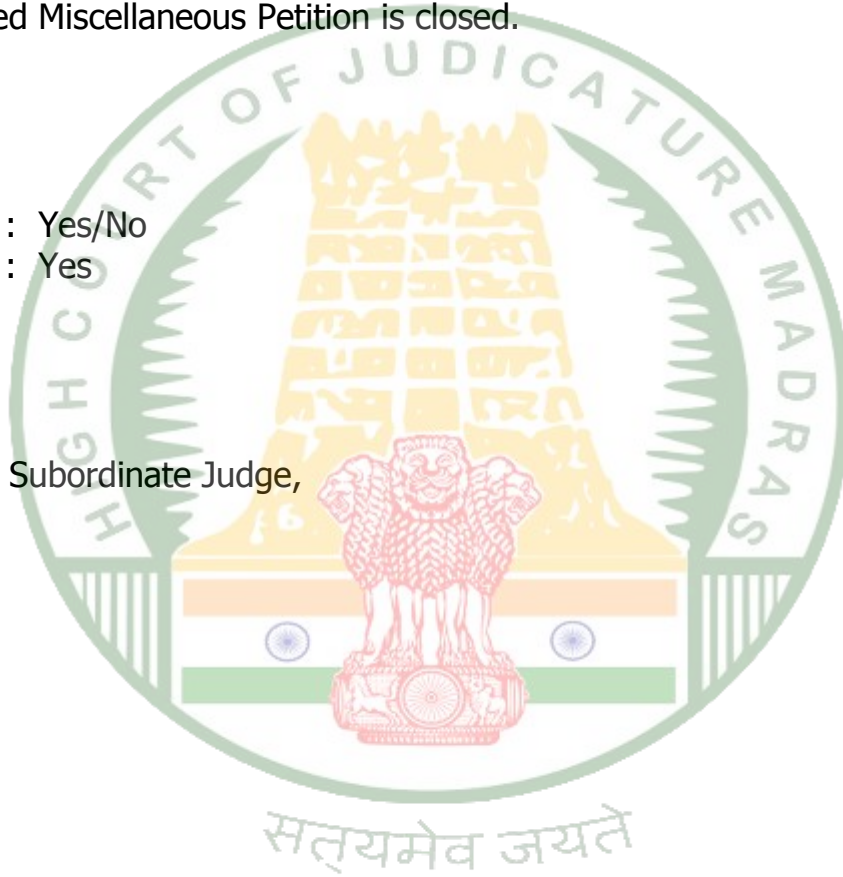
Keeping in view of the above fact, this revision petition is disposed of with liberty to the petitioners to approach the Court below to take appropriate steps to implead the other person, viz., Palanisamy. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.10.2016

Index : Yes/No
Internet : Yes
gpa

To

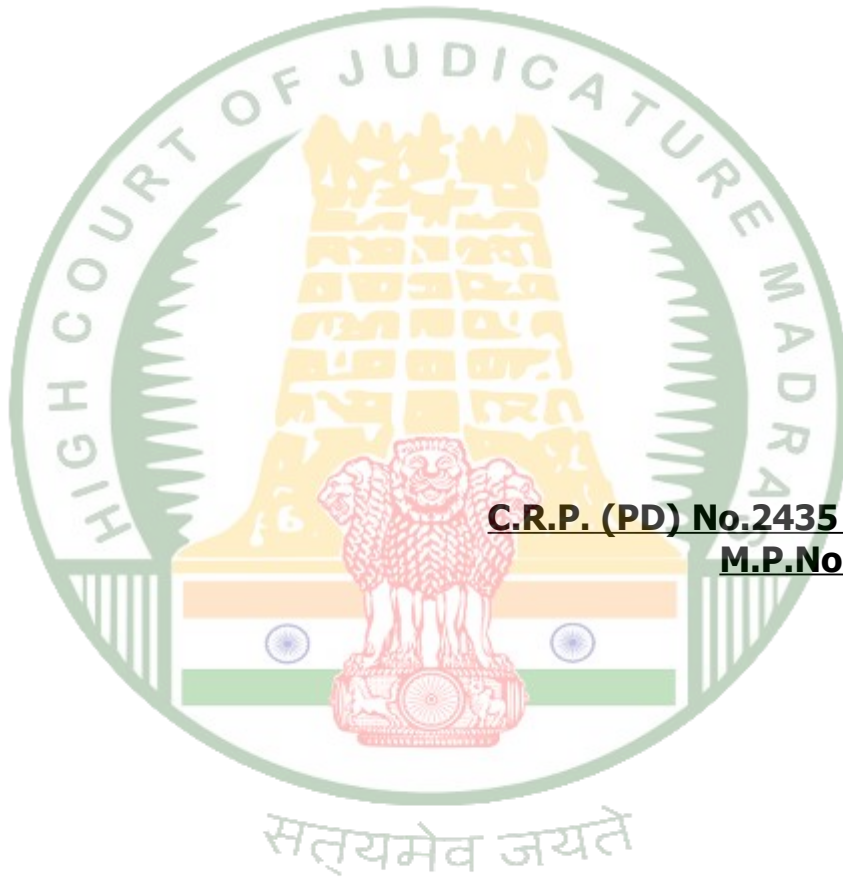
II Additional Subordinate Judge,
Erode



WEB COPY

T.MATHIVANAN.J.,

gpa



**C.R.P. (PD) No.2435 of 2012 &
M.P.No.1 of 2012**

WEB COPY

25.10.2016