

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.9.2016

CORAM

THE HON'BLE MR.JUSTICE T. MATHIVANAN

CIVIL REVISION PETITION No.4238 of 2012

A.Krishnasamy, S/o.Arumugam,
D.No.371, Main Road
Othakuthurai, Googalur Village,
Gobi Taluk, Erode District.

: Petitioner /petitioner

Vs.

1. Sakunthala

W/o.Late O.S.Rangasamy

2. Nandakumar

S/o.Late O.S.Rangasamy

Both residing at

Palapalayam, Odathurai Village

Bhavani Taluk, Erode District.

: Respondents / Respondent

ORDER

This Memorandum of Civil Revision has been directed against the fair and decretal order dt.28.8.2012 and made in an application in IA 492/2012 in OS NO.136/2011 on the file of the learned principle District Munisiff, Bhavani.

2. The Revision Petitioner herein is the defendant in the suit whereas the respondents herein are the plaintiff.

3. The respondents have filed a suit in OS NO.136/2011 On the file of the learned District Munisiff, Bhavani, as against the Revision Petitioner seeking the relief of declaration to declare that the Sale Deed executed in favour of the defendant under document no.759/2011 dt:7.3.2011 is not binding on the 1st Plaintiff and is liable to be set aside as null and void and also for the consequential relief of permanent injunction.

4. This suit was contested by the Revision Petitioner by filing his return statement. During the pendency of the suit the Revision Petitioner had filed a petition in IA 492/2012 under Section 10 of the Code of civil procedure to stay the further proceedings of the suit, till the dispute in OS NO:375/2005 pending on the file of the 1st Additional District Munisiff, Bhavani is finally disposed of. The respondent herein had contested the Petition.

5. After hearing both sides the learned trial Judge had proceeded to dismiss the Petition for want of records relating the suit in OA 375/2005.

6. Being aggrieved by the impugned order dt:28.8.2012 the defendant stands before the court with this Revision.

7. Heard Mr.A.K.Kumarasamy learned Counsel appearing for the revision petitioner and Mr.N.Manoharan learned Counsel appearing for the respondents 1&2.

8. According to the Revision Petitioner / defendant the trial was commenced in this suit and PW 1 was examined in Chief and the suit was posted for the cross examination of PW1. It is revealed from the averments of the affidavit filed in support of the Petition that the suit is based on a Will dt:29.12.2003, alleged to have

been executed by the Petitioners Vendor's father O.S. Rangasamy in favour of the 1st Plaintiff. Already the 1st Plaintiff had filed a suit in OS 375/2005 which is now pending on the file of the 1st Additional District Munisiff, Bhavani. The validity of the Will is seriously disputed by the Revision Petitioner. According to the Revision Petitioner the subject matter of the present suit in OS NO.136/2011 is directly and substantially in issue in the previous suit in OS NO.375/2005. Hence the Petitioner has filed the above petition to stay the proceedings of the suit OS NO;136/2011 till the dispute in OS NO;375/2002 pending on the file on the 1st Additional District Munisiff, Bhavani is finalized and disposed of. It was contended on behalf of the respondents/Plainiffs.

9.The relief sought for in the present suit in OS No:136/2011 and the relief sought for in the suit in OS NO:375/2005 are entirely different from one another.

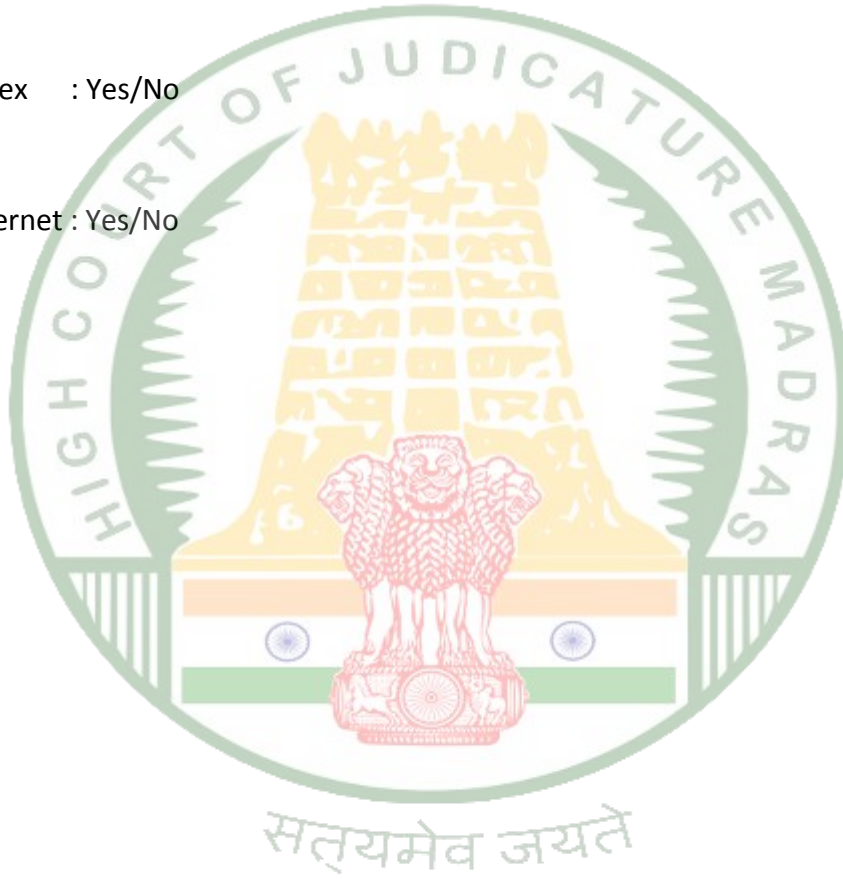
10.Obviously the revision petitioner being the defendants had not chosen to produce the copy of the plaint as well as the written statement relating to the suit in OS NO:375/2005. Under this circumstance the court blow had found that the revision petitioner had failed to prove the fact that the subject matter which is in issue in the suit in OS NO:136/2011 is directly and subsequently in issue in the suit in OS NO:375/2005 pending on the 1st Additional District Munisiff and therefore the petition filed by the revision petitioner was dismissed on 28.8.2012. This court has carefully gone through the grounds of revision along with the impugned order. Having regard to the relevant facts and circumstances this court finds that the revision petition is liable to be dismissed as there is devoid of any merit.

court below. However there shall be no order as to be cost.

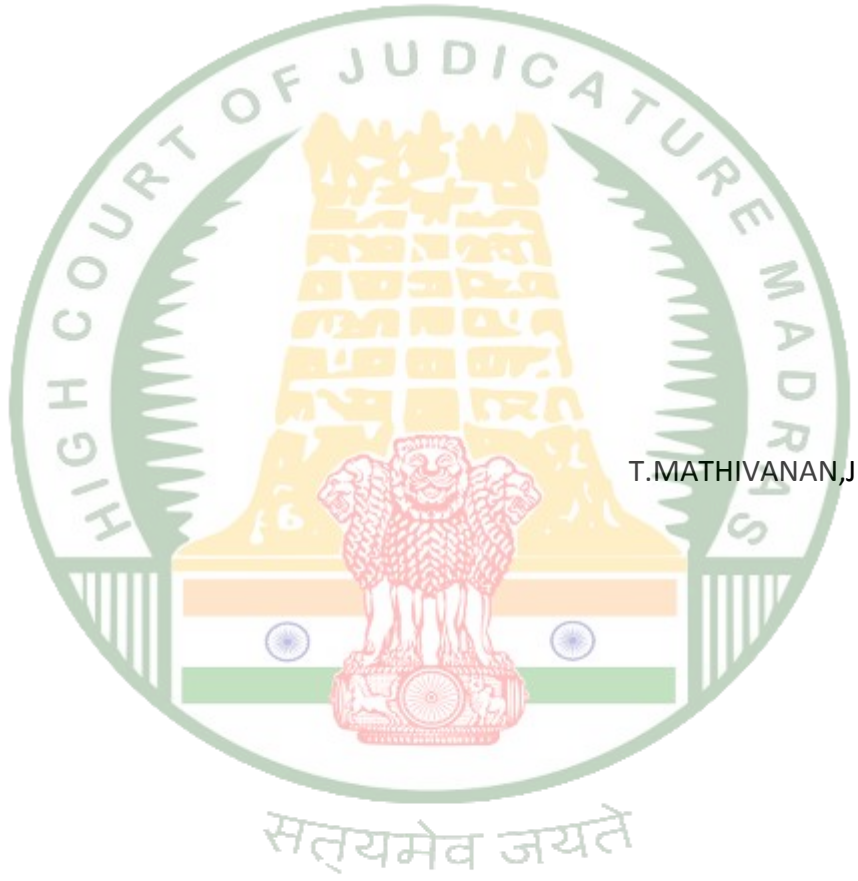
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