

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.3315 OF 2017

AND

CMP NO.15476 OF 2017

1.E.Ramesh
2.Thiruvengadam

... Petitioners

Vs.

K.Manoj Kumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order of the learned I Additional District and Sessions Judge, Vellore, Vellore District, dated 28.02.2017 in I.A.No.42 of 2017 in O.S.No.83 of 2012.

For Petitioners : Mr.T.M.Hariharan

ORDER

This Civil Revision Petition is directed against the dismissal of the interlocutory application filed to eschew the documents already marked before the Court.

2. The petitioners have filed an interlocutory application to eschew the documents on the grounds that the originals of the documents were not marked and the certified copies marked before the Court is not admissible in evidence. The documents which are sought to be marked are Ex.A2 - partition deed and Ex.A11 - sale deed. The respondent filed a counter stating that Ex.A2 - partition deed was marked as a document by the petitioners themselves in another suit in O.S.No.12 of 2004. Ex.A11 - sale deed is in the custody of the purchaser who remained *exparte*. Both the documents could not be produced by the petitioners and that is why the certified copies were filed before the Court. At the time of marking the documents, no objections were raised by the petitioners. At a later point of time, the interlocutory application came to be filed. The Trial Court, considering the judgments of the Hon'ble Supreme Court, dismissed the interlocutory application.

3. It is no doubt true that Ex.A2 and Ex.A11, which were sought to be eschewed by the petitioners, were already marked as exhibits, without any objections. Secondly, the petitioners have not denied that they also have relied on a particular document in a previous

suit. In so far as the sale deed is concerned, the original purchaser has remained *exparte* and therefore, the documents could not be produced. The Hon'ble Supreme Court in ***R.V.E. VENKATACHALA GOUNDER VS. ARULMIGU VISWESARASWAMI AND V.P. TEMPLE AND ANOTHER [2003 (8) SCC 752]*** followed in ***SALIMAR CHEMICALS WORKS LTD., VS. SURANDRA OIL AND DAL MILLS (REFINERIES) AND OTHERS [CIVIL APPEAL NO.52 OF 2005 DATED 27.08.2010]*** has categorically held that the objections to the admissibility of the documents should have been made then and there. If it is not objected, it amounts to waiver of the necessity for insisting on formal proof of a document. Secondly, the opportunity to the party tendering evidence to prove the admissibility and removing the objections raised by the opposite party would be taken away. In such circumstances, the documents which were already marked cannot be eschewed. Therefore, the finding of the Trial Court eschewing the documents at this distance point of time is not maintainable is correct. Therefore, I do not find any discrepancy in the order passed by the Trial Court. It is always open to the petitioners to raise their objections on the reliability of the documents at the time of arguments.

4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

19.09.2017

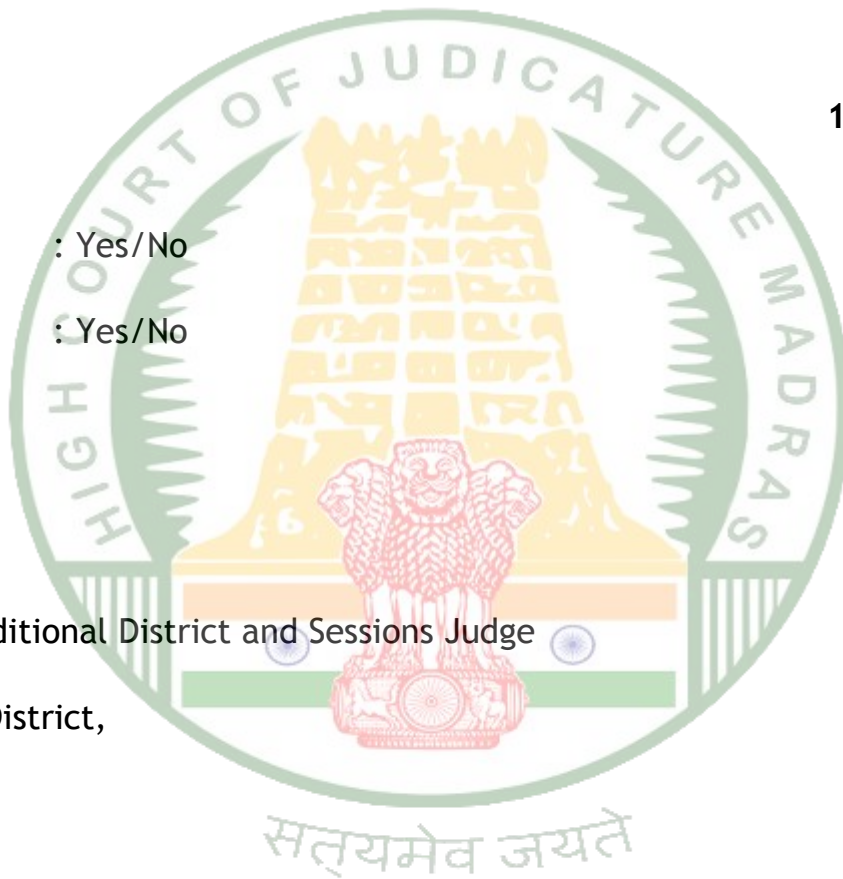
Index : Yes/No

Internet : Yes/No

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To

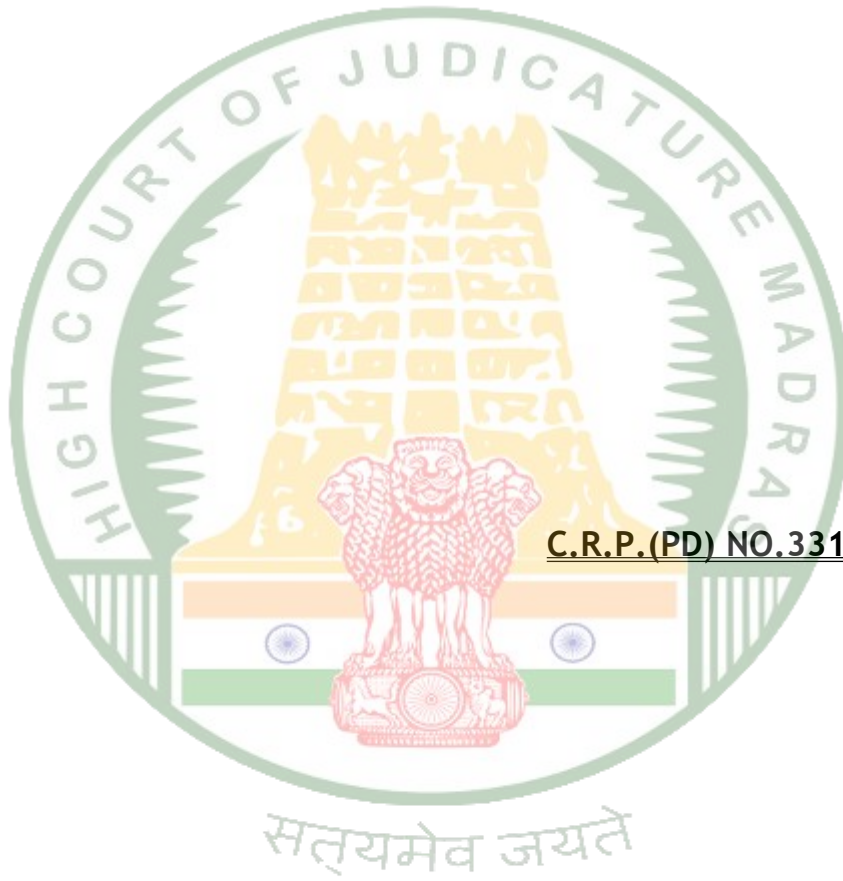
The I Additional District and Sessions Judge
Vellore,
Vellore District,



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M.GOVINDARAJ, J.

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