

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.3650 of 2017
and
C.M.P No. 16996 of 2017

Manickavelu

.. Petitioner

Vs

Chinnarasu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 06.03.2017 made in Tr.O.P. No. 92/2016 on the file of the Principal District Judge, Puducherry.

For Petitioner : Mr. T.M. Naveen

For Respondent : Mr. R. Mugundhan

ORDER

This revision arises against the order and decree dated 06.03.2017 made in Tr.O.P. No. 92/2016 on the file of the Principal District Judge, Puducherry.

2. The petitioner filed the suit in O.S. No. 270 of 2002, for specific performance against the vendor of the respondent herein. On 08.11.2002, the suit was decreed. In the meanwhile, the defendant in the suit died. Based on the decree passed in favour of the petitioner, execution proceedings were initiated. Thereafter, sale deed was executed on 29.10.2007. Since possession was not handed over by the legal heirs of the defendant, another E.P. No.30/2014 was filed and the same is pending. The respondent herein, filed a suit in O.S. No. 73 of 2008 before the Principal District Munsif, Puducherry. The aforesaid suit has been taken up for trial, evidence of the plaintiff has been concluded and the defence side evidence has commenced. At this stage, the petitioner filed petition in Tr.O.P No.92/2016 to transfer the suit to be tried along with the E.P. No.30/2004 pending before the learned Additional Sub Judge, Puducherry. The court below dismissed the said petition stating that the transfer petition has been filed at the stage of defence side evidence, only to delay the proceedings. Challenging the same, this revision petition is filed before this Court.

3. According to the learned counsel for the petitioner, in O.S. No. 270 of 2002 decree has been passed. Pursuant to the decree, sale deed was executed for five items of the property. The execution proceedings in E.P. No. 30/2014 has been filed for delivery of possession. In the said E.P., a third party has filed the Obstruction Petition under Section 47 of CPC. So far as items 1 and 2 of the schedule properties are concerned, the respondent has filed a suit in the year 2008. Now, the present application has been filed seeking for transfer of court. Therefore, no prejudice would be caused to the respondent, if the said application is allowed.

4. Per contra, the learned counsel for the respondent would submit that the respondent is not a party to the execution proceedings in E.P. No. 30 of 2014, which is pending before the Additional Subordinate Judge, Puducherry. It is admitted that the suit property in item Nos. 1 and 2 are one and the same. If any order is passed in the Execution Petition, for delivery of possession, the same would affect the right of the respondent. Since the respondent has purchased item Nos. 1 and 2 of the schedule property from the vendor of the petitioner, deceased

Panjali Ammal, the legal heirs of the said Panjali Ammal is a party to the proceedings. At this stage, the learned counsel for the respondent would submit that the petitioner has filed this application only to delay the proceedings in the said suit. However, the respondent will cooperate for early disposal of the suit.

5. In the interest of justice, to avoid multiplicity of proceedings and since no prejudice would be caused if the said suit is transferred to the Additional Subordinate Court, Puducherry. In the event of transfer from the Principal District Munsif Court, Puducherry, both the parties undertake to co-operate, for the disposal of the suit.

6. In view of the above submissions of the learned counsel for both the parties, this Court is inclined to pass the following order :-

1. The order dated 06.03.2017 passed in Tr.O.P No.92/2016 is set aside.
2. The Principal District Munsif Court, Puducherry is directed to withdraw the suit in O.S.No.73/ 2008 and transfer the same to the file of Additional Subordinate Court, Puducherry.

3. The Additional Subordinate Court, Puducherry is directed to conduct a simultaneous trial of the suit, along with the E.P. No. 30 of 2014, in accordance with law.

4. As per the undertaking given before this Court, the parties shall co-operate with the disposal of the said suit and the execution proceedings. The Court below is directed to dispose of the suit in O.S. No. 73/2008 and E.P. No.30/2014 within a period of four months from the date of receipt of a copy of this order.

7. The Civil Revision Petition is allowed on the above terms. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

08.12.2017

Index : Yes/ No

Speaking order/ Non speaking order

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To

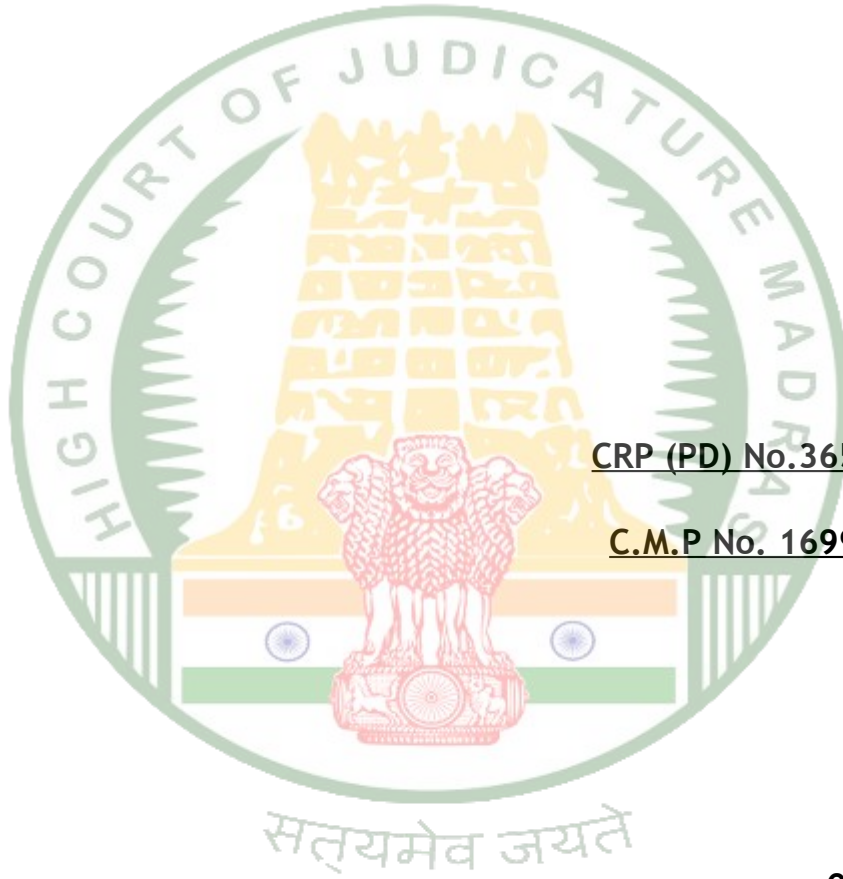
1. The Principal District Munsif Court,
Puducherry.

2. The Additional Subordinate Court
Puducherry.

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D. KRISHNAKUMAR J.,

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