

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) Nos. 3942 and 3943 of 2017
and
CMP Nos. 18435 & 18436 of 2017

S.A. Shaik Usman

.. Petitioner in
both CRPs

Vs.

1. T. Somasundaram
2. M. Gunasekaran
3. S.A. Zahir Hussain

.. Respondents in
both CRPs

PRAYER in both CRPs: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order and decree passed by the learned IX Assistant City Civil Judge, Chennai in EASR No. 40009 of 2017 in E.P. No. 4739 of 2013 and EASR No. 40010 of 2017 in E.P. No. 4741 of 2013 in OS No. 629 of 2008 dated 20.10.2017 and pass such further orders.

For Petitioner
in both CRPs

: Mr. T. Surendran

For Respondents
in both CRPs

: Mr. P.L. Narayanan for R1

:No Appearance for R2 & R3

COMMON ORDER

These Civil Revision Petitions arise against the order and decree passed by the learned IX Assistant City Civil Judge, Chennai in EASR No. 40009 of 2017 in E.P. No. 4739 of 2013 and EASR No. 40010 of 2017 in E.P. No. 4741 of 2013 in OS No. 629 of 2008 dated 20.10.2017.

2. The learned counsel for the petitioner submitted that the petitioner purchased the suit property vide registered sale deed on 04.06.2015. Subsequent to the threat of the 1st respondent, the petitioner obtained an order of injunction in I.A. NO.6620/2017 in O.S. No.2531 of 2017 before the XVIII Assistant City Civil Court, Chennai. Subsequently, it was found that the 1st respondent had already filed O.S. No. 629 of 2008 against the 2nd and 3rd respondents and obtained a decree in favour of him. The appeals filed by the respondents were also dismissed. Hence, the 1st respondent filed two execution petitions for handing over possession and for registering the property in favour of the decree holder/ 1st respondent. The petitioner herein, filed the present

applications against the Execution Petitions, as in-executable. The same were dismissed by the court below. Challenging the same, the revision petitions are filed before this Court.

3. The learned counsel for the petitioners relied upon the decisions of this Court in the case of *K.Venkatesan & Ors. vs. E. Hemantharaj reported in CDJ 2016 MHC 5629* and the case of *G.V. Vanitha & Ors. vs. K. Dhanasekaran & Ors. reported in 2016 (5) CTC 329*, wherein it is held that the court below cannot decide the applications on merits, without numbering the same.

4. The learned counsel for the respondents fairly conceded that in the light of the aforesaid decisions, the order passed by the court below is liable to be set aside, subject to maintainability.

5. In the light of the above, the order and decree passed by the IX Assistant City Civil Judge, Chennai in EASR No. 40009 of 2017 in E.P. No. 4739 of 2013 and EASR No. 40010 of 2017 in E.P. No. 4741 of 2013 in OS No. 629 of 2008 dated 20.10.2017, is set aside. The Court

below is directed to number the said Interlocutory Applications, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the court below is directed to dispose of the Execution Applications, within a period of four weeks, including the maintainability of the said Applications.

6. Both the Civil Revision Petitions are allowed, on the above terms. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

11.12.2017

Speaking order/ Non speaking order

Index: Yes/ No

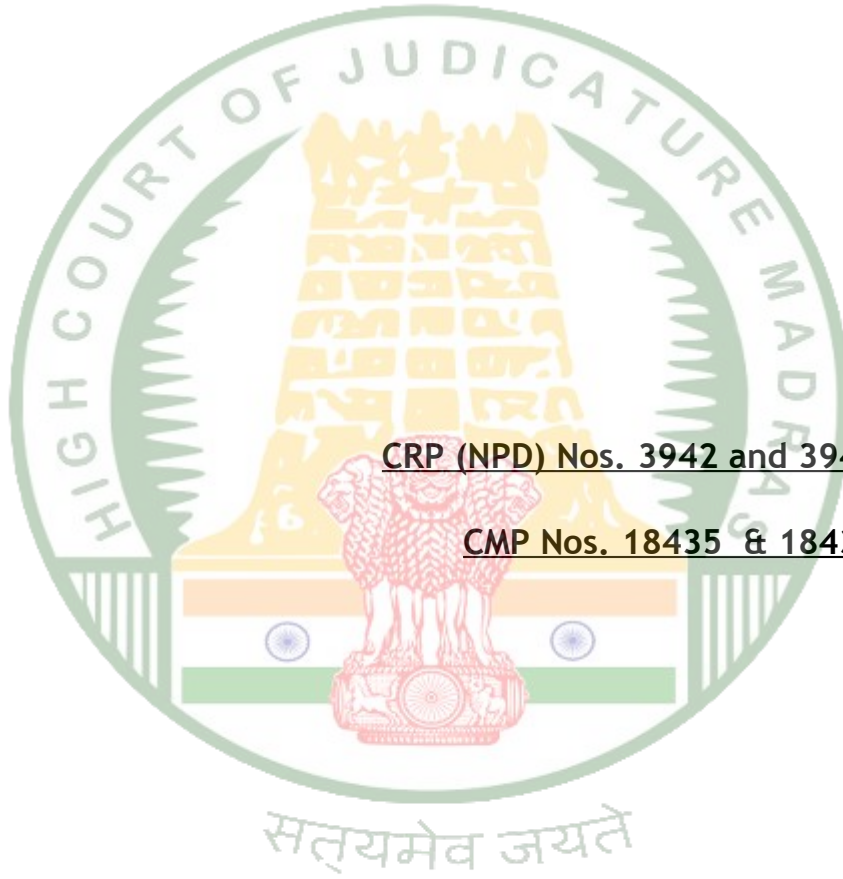
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To
The IX Assistant City Civil Judge,
Chennai

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D. KRISHNAKUMAR J.,

avr



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