

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

CRP.NPD.No.3981 of 2017 and
CMP.No.18579 of 2017

S.I.M.Khader Mohideen ... Petitioner

Vs.

1.V.Nagarajan
Amos Annappan (Deceased)
2.N.Saravanan
3.Nandalal Jain ... Respondents

PRAYER : The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the order and decretal order of the learned Principal Judge, City Civil Court, Chennai dated 28.08.2017 in Tr.OP.No.98 of 2016.

For Petitioner : Mr.S.Saravanan

ORDER

The fourth respondent herein has filed a suit in OS.No.10825 of 1996 for specific performance of the sale agreement. The aforesaid suit was decreed on 30.04.2002. Then, in the above suit, an EP for delivery of vacant possession of the suit property was filed and the same was allowed. The fourth respondent could not be

able to execute the warrant, because of the obstruction of the petitioner. Hence, the fourth respondent has filed an application in IA.No.2158 of 2015 for removal of obstruction of the petitioner. According to the petitioner, the petitioner has filed a suit in OS.No.2044 of 2016 before the XI Assistant City Civil Court, Chennai. The petitioner has filed an application in Tr.OP.No.98 of 2016 before the Principal Judge, Chennai to transfer EP.No.4253 of 2013 filed by the fourth respondent to the XI Assistant City Civil Court, Chennai to be heard along with O.S.No.2044 of 2016. The said application was dismissed by the Principal Judge, Chennai. Challenging the said order, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the petitioner purchased the said property and subsequently, he is in possession of the suit property. The petitioner came to know the aforesaid decree in OS.No.10825 of 1996. Therefore, the petitioner filed the suit in O.S.No.2044 of 2016 before the XI Assistant City Civil Court, Chennai for declaration and the said suit is pending. Therefore, the petitioner has filed the present application to transfer EP.No.4253 of 2013 to the XI Assistant City Civil Court, Chennai to be heard along

with O.S.No.2044 of 2016. But, without appreciating the case of the petitioner, the above application has been dismissed by the Principal Judge, Chennai. Hence, the petitioner has filed the present Civil Revision Petition before this Court.

3. Considered, the submissions made by the learned counsel for the petitioner and perused the materials available on record.

4. On facts, the petitioner has filed the suit in OS.No.2044 of 2016 before the XI Assistant City Civil Court, Chennai declaration. The fourth respondent / decree holder has filed the suit in OS.No.10825 of 1996 IX Assistant City Civil Court, Chennai for specific purpose and obtained the decree. Thereafter, an EP.No.4253 of 2013 was filed for recovery of possession and subsequently, filed a petition in EA.No.3524 of 2015 for removal of the obstruction of petitioner. At this stage, the present application has been filed by the petitioner to transfer EP.No.4253 of 2013 to the XI Assistant City Civil Court, Chennai to be heard along with O.S.No.2044 of 2016. It is the fact that the sale deed was executed on 23.06.2008. The petitioner has filed the present suit in the year of 2016. Even though, the petitioner

had the knowledge, after decree was passed, at the stage of delivery of possession, the present application has been filed by the petitioner. Therefore, there is no justification to interfere with the orders passed by the court below. Prima facie case is not made out to entertain the Civil Revision Petition.

5. Therefore, there is no error or illegality in the order passed by the trial court. However, it is for the petitioner to work out his remedy before the appropriate forum, if so advised, if it is permissible under law. The Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

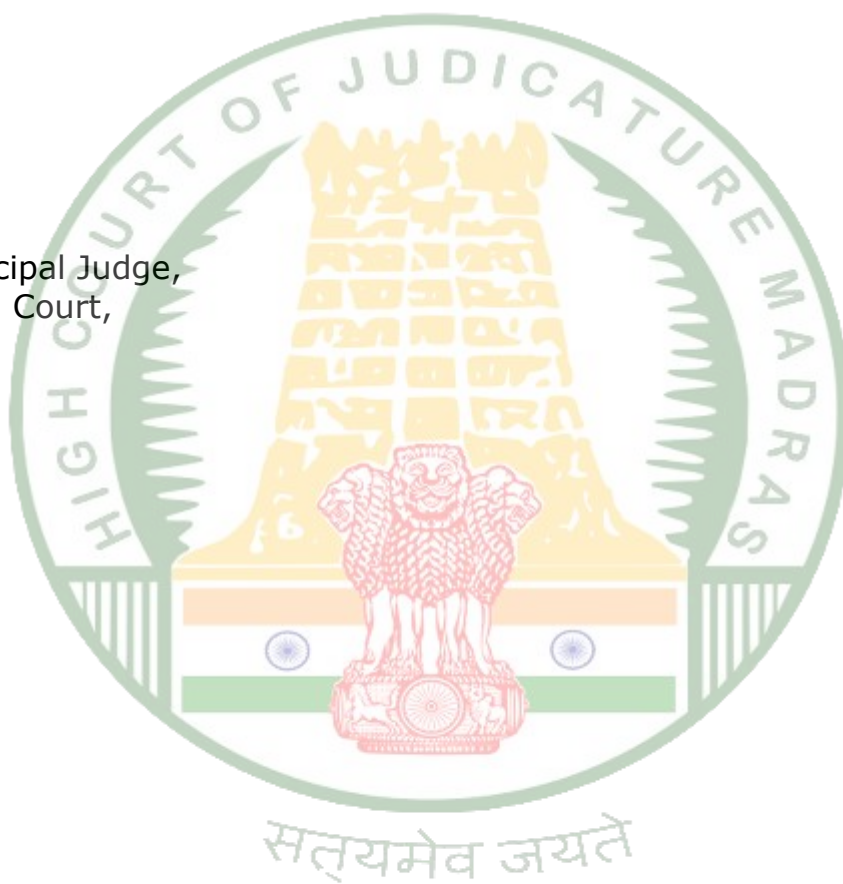
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To
The Principal Judge,
City Civil Court,
Chennai



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D.KRISHNAKUMAR.J

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