

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 4119 of 2017
and
C.M.P No. 19313 of 2017

B.K. Sekaran

... Petitioner

Vs

1. Murugesan
2. Dhanalakshmi
3. Shanthi
4. Lakshmi
5. M.A. Amul @ Sandhiya
6. The Sub Registrar
Pallipattu
Thiruvallur District.

..Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order dated 20.09.2017 passed in I.A. No.178 of 2016 in O.S. No.152 of 2013 on the file of the District Munsif cum Judicial Magistrate, at Pallipattu, Thiruvallur District and quash the same.

For Petitioner : Mrs. N. Devi

ORDER

This revision arises against the order and decretal order dated 20.09.2017 passed in I.A. No.178 of 2016 in O.S. No.152 of 2013 by the District Munsif cum Judicial Magistrate, Pallipattu, Thiruvallur District.

2. The learned counsel for the petitioner would submit that the petitioner filed a suit for declaration and permanent injunction. The 1st defendant filed his written statement in the suit. An ex-parte decree was passed on 27.07.2015 as against defendants 2 to 5/ respondents 1 to 4. An Interlocutory Application in I.A. No. 178 of 2015 was filed to set aside the ex-parte decree. Counter statement was filed by the petitioner. The said application was allowed on 20.09.2017 on payment of cost. Challenging the same, the present revision petition is filed.

3. According to the petitioner, the respondents 1 to 4 have filed the present application only to drag on the proceedings. On receipt of summons, the respondents 1 to 4 entered appearance through counsel on 21.01.2014. The respondents 1 to 4 failed to file the written statement and was set exparte on 03.09.2014. Thereafter, the said suit

was decreed on 27.07.2015, after examining the petitioner. Subsequently, the present application to set aside the ex-parte decree dated 27.07.2015, was filed stating that the respondents 1 to 4 have engaged another counsel. The respondents 1 to 4 have not filed written statement but have adopted the written statement filed by the 5th defendant, therein. Therefore, allowing the application is *per se illegal* and erroneous. Without considering the submission of the petitioner, the court below has allowed the application on payment of cost. Therefore, the order passed by the trial court is liable to be set aside.

4. According to the respondents 1 to 4, the 5th respondent/1st defendant have forged the signature in the adopted written statement filed on behalf of the defendants 2 to 5 in the suit. Therefore, the respondents 1 to 5 have filed change of vakalat, engaging new counsel. Considering the allegations made by the respondents 1 to 4 against the 1st defendant/ 5th respondent, the application was allowed on payment of cost.

5. In the light of the decision of the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*, reported in (2013) 12 SCC 649, this Court has adopted a liberal approach, in setting aside the ex-parte application.

6. From the facts of the aforesaid case, this Court is of the view that an opportunity shall be granted to the respondents 1 to 4/ defendants 2 to 5, to agitate the suit on merits. No prima facie case is made out by the petitioner to entertain the revision petition. Therefore, the order of the court below is confirmed.

7. In fine, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

सत्यमेव जयते

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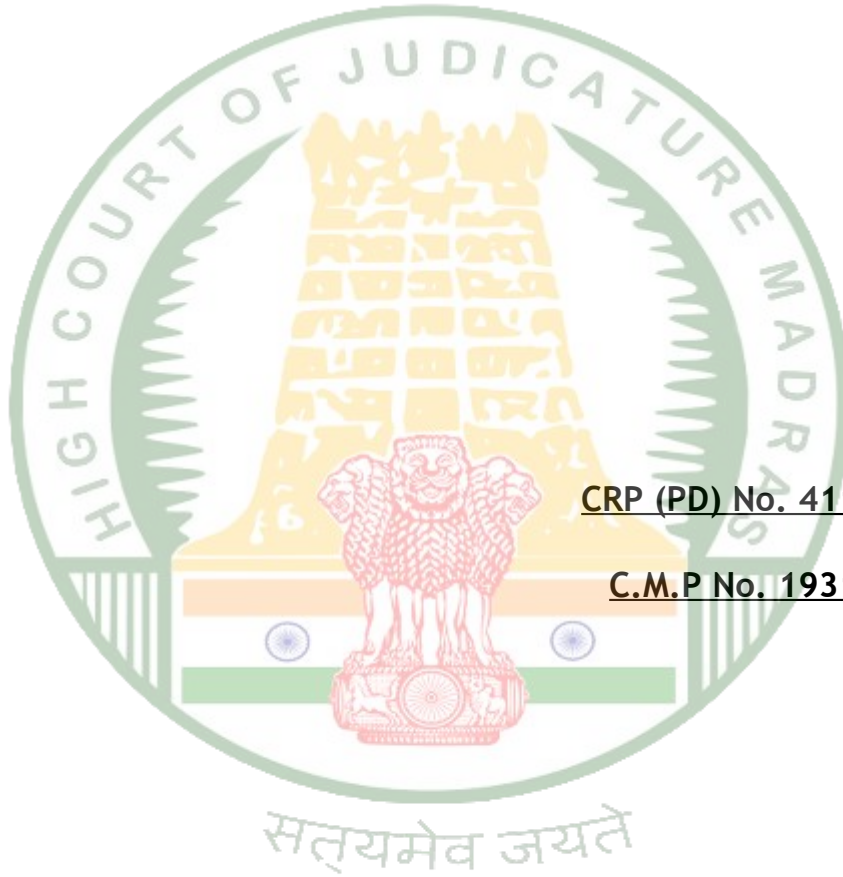
10.11.2017

Index : Yes/ No
Speaking order/ Non speaking order
To

The District Munsif cum Judicial Magistrate,
Pallipattu, Thiruvallur District
[Issue order copy within one week]

D. KRISHNAKUMAR J.,

avr



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