

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3897 of 2014
& M.P.No.1 of 2014
& C.M.P.No.17615 of 2017

C.Rajakumari

.. Petitioner

Vs.

1.D.Rajendran
2.D.Thiruvengadam (Deceased)
3.Sumathi
4.T.Rukmangadhan
5.T.Rishivardhan
6.T.Parthiban

.. Respondents

(RR4 to 6 already recorded as
Legal Representatives of deceased
2nd respondent vide order of Court
dated 18.07.2017 made in
C.M.P.No.2875 of 2017)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.08.2014 made in I.A.No.673 of 2014 in O.S.242 of 2012 on the file of the Subordinate Court, Poonamallee.

For Petitioner : Mr.M.Santhanaraman

For R1 & R3 : No appearance
For R2 : Died

For R4 to R6 : Mr.M.S.Arun Kumar

ORDER

The petitioner/plaintiff filed this Civil Revision Petition against the respondents/defendants, challenging the order of the learned Judge dated 11.08.2014 made in I.A.No.673 of 2014 in O.S.242 of 2012 on the file of the Subordinate Court, Poonamallee. The petitioner filed the said suit for specific performance and the present application is filed for a permission to file additional written statement filed by the defendants 1 and 2.

2.Heard the learned counsel for the petitioner as well as the respondents 4 to 6 and perused the materials available on record.

3.From the impugned order of the learned Judge, allowing the I.A.No.673 of 2014, it is seen that the respondents 1 and 2 have come out with the present application on the ground that they have now traced out certain documents and based on which it is necessary to file additional written statement. The

petitioner opposed the said application on the ground that the stand now taken by the respondents 1 and 2 is contrary to the stand taken in the original written statement. The learned Judge has held that the respondents are entitled to take inconsistent stand and plaintiff is at liberty to raise any question regarding the same during trial. It is well settled that the defendant can take inconsistent stand, but they are not entitled to take contradictory or destructive stand of the stand taken earlier. The learned Judge has not properly considered the materials on record and failed to exercise the powers conferred on him properly. In view of the same, the order dated 11.08.2014 made in I.A.No.673 of 2014 is set aside and this Civil Revision Petition is allowed. The application is remitted back to the learned Judge for fresh consideration on merits after giving opportunity to both the parties.

4. At the time of hearing the Civil Revision Petition on 07.11.2017, the learned counsel for the petitioner submitted that the petitioner and respondents 4 to 6 settled the matter and entered into a compromise. The petitioner filed C.M.P.No.17615 of 2017 to record the compromise under Order XXIII Rule 3 C.P.C read with Section 151 C.P.C and filed additional typed set of papers

enclosing the memo of compromise. The learned counsel for the petitioner also submitted that the respondents 4 to 6 are willing to sell their share in the property to the petitioner and prayed for orders being passed accordingly. The petitioner and respondents 4 to 6 are directed to file memo of compromise afresh before the Trial Judge and appear before the Trial Court. On such appearance of the parties and on filing the memo of compromise afresh, the learned Judge is directed to consider the same on merits and in accordance with law.

5. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No
gsa

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13.11.2017

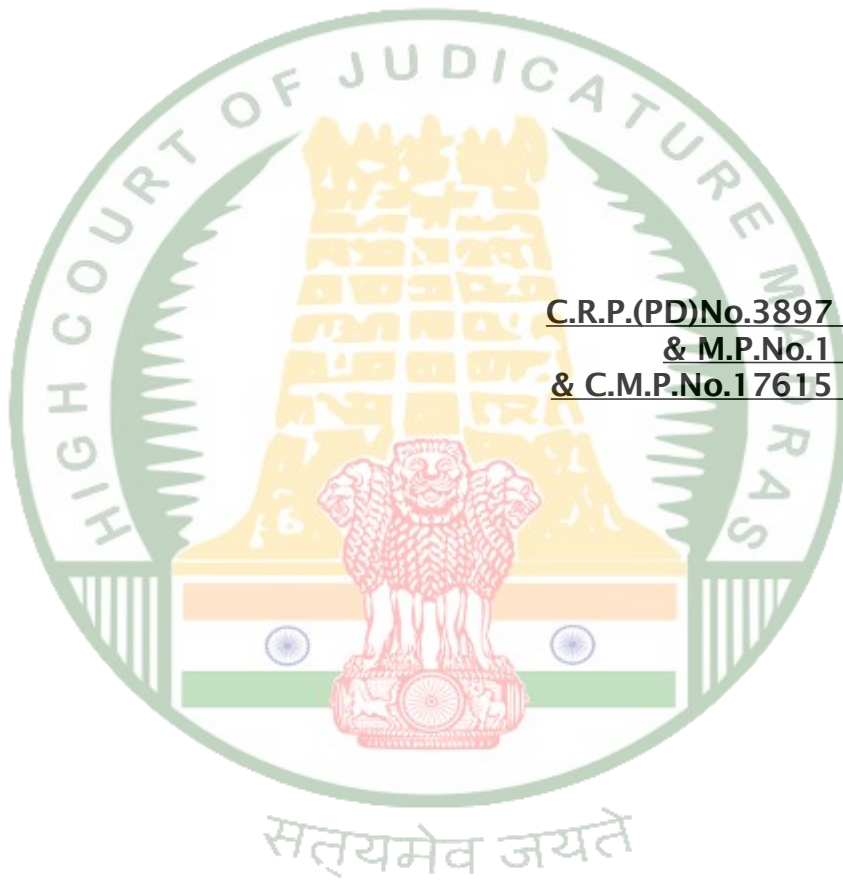
To

The Subordinate Judge,
Poonamallee.

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V.M.VELUMANI,J.

gsa



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