

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3919 of 2014
& M.P.No.1 of 2014

M.Radhakrishna

.. Petitioner

Vs.

1.M.Sampangirama Reddy
2.M.Aswath Reddy
3.Suresh Babu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 29.01.2014 made in I.A.No.504 of 2008 in O.S.No.108 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Denkanikottai.

For Petitioner : M/s.Zeenath Begum

For R1 & R2 : No appearance

For R3 : Mr.S.Kumaresan

ORDER

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This Civil Revision Petition is filed to set aside the order dated 29.01.2014 made in I.A.No.504 of 2008 in O.S.No.108 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Denkanikottai.

2.The petitioner is plaintiff and respondents 1 and 2 are the defendants in O.S.No.108 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Denkanikottai. The petitioner filed the said suit for declaration to declare that he is the absolute owner of the suit schedule property and for permanent injunction restraining the respondents 1 and 2 from interfering with his peaceful possession and enjoyment of the suit schedule property. Pending suit, the petitioner filed two applications in I.A.No.504 of 2008 under Order VI Rule 17 read with Section 151 of C.P.C for amendment of the plaint and I.A.No.505 of 2008 was filed to implead the purchaser/third respondent herein as the third defendant in the suit. Pending applications, the suit was decreed exparte on 17.09.2008. I.A.No.505 of 2008 was closed on the ground that suit was decreed. The respondents 1 and 2 filed I.A.No.623 of 2008 to set aside the exparte decree. The said application was allowed on 18.01.2010 and exparte decree was set aside. The learned Judge took I.A.No.504 of 2008 for hearing.

3.The respondents 1 and 2 filed counter affidavit and contended that the said application is not maintainable in view of the fact that no order was passed in I.A.No.505 of 2008 filed to implead the third respondent herein/third defendant/purchaser.

4.The learned Judge dismissed the present application in I.A.No.504 of 2008 on the ground that petitioner ought to have impleaded the proposed party, Suresh Babu at the time of filing of the suit itself and the application has been filed only to drag on the proceedings.

5.Against the said order dated 29.01.2014 made in I.A.No.504 of 2008 in O.S.No.108 of 2008, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner as well as the third respondent and perused the materials available on record. Though notice is served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation either in person or through counsel.

7.From the materials on record, it is seen that petitioner has stated in the affidavit filed in support of the present application that respondents 1 and 2 have secretly executed the sale deed in favour of the third respondent/proposed party, knowing fully well that petitioner is owner of the property and he is in possession and

enjoyment of the suit property. The suit is of the year 2008 and the petitioner has filed the present application for amendment in the year 2008 itself. In view of the above facts, the reasoning of the learned Judge that application is belated one and filed only to drag on the proceedings is erroneous and is liable to be set aside and the order in the I.A.No.504 of 2008 is hereby set aside. From the order of the learned Judge, it is seen that I.A.No.505 of 2008 filed by the petitioner to implead the third respondent/proposed party/purchaser was closed on the ground that exparte decree was passed. The said exparte decree was set aside vide order dated 18.01.2010 made in I.A.No.623 of 2008. In view of setting aside the exparte decree, I.A.No.505 of 2008 is suo-motu restored to file by this order and learned Judge is directed to take up the said order issuing fresh notice to the proposed party and pass orders on merits after hearing all the parties.

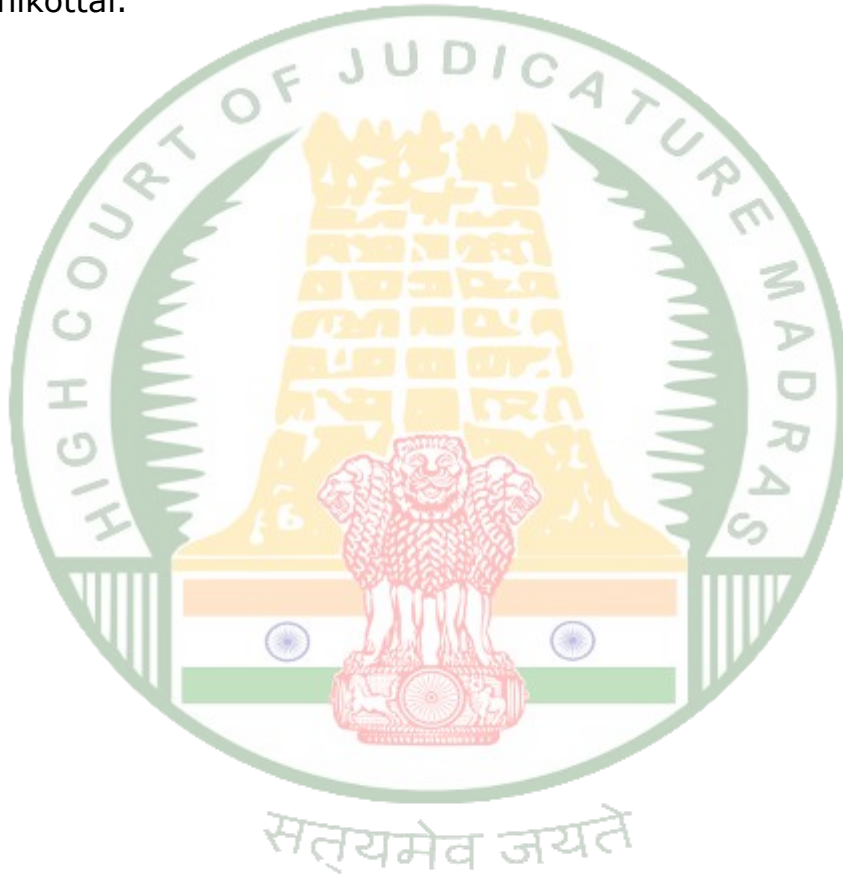
8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2017

Index: Yes/No
gsa

To

The District Munsif Cum Judicial Magistrate,
Denkanikottai.



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V.M.VELUMANI,J.

gsa



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