

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1793 to 1798 of 2011
& M.P.No.1 of 2011

Hamshaveniammal

.. Petitioner in
all C.R.Ps'

Vs.

Stanley Paul
Rep. By its General Power of
Attorney Agent Mr.T.Paul Banion

.. Respondent in
C.R.P.(PD).Nos. 1793,
1795 & 1797/2011

Earnest Paul
Rep. By its General Power of
Attorney Agent Mr.T.Paul Banion

.. Respondent in
C.R.P.(PD).Nos. 1794,
1796 & 1798/2011

COMMON PRAYER: Civil Revision Petitions filed Under Article 227 of the Constitution of India, against the fair and decretal orders dated 08.12.2010, made in I.A.Nos.15937 to 15940 of 2010, orders dated 11.01.2011, made in I.A.Nos.892 of 2011 in 15938 of 2010 and 893 of 2011 in 15937 of 2010, in O.S.No.8187 of 2008 on the file of the I Assistant City Civil Judge, Chennai.

(In all C.R.Ps')

For Petitioner	: Mr.R.Nagasundaram
For Respondent	: M/s.J.Thilagaraj

COMMON ORDER

These civil revision petitions are filed against the fair and decretal orders dated 08.12.2010, made in I.A.Nos.15937 to 15940 of 2010, orders dated 11.01.2011, made in I.A.Nos.892 of 2011 in 15938 of 2010 and 893 of 2011 in 15937 of 2010, in O.S.No.8187 of 2008 on the file of the I Assistant City Civil Judge, Chennai.

2. The issue involved in all the six civil revision petitions are interlinked and hence, disposed of by this common order.

3. The petitioner in these civil revision petitions are plaintiff, respondent in C.R.P(PD).Nos.1793, 1795 & 1797 of 2011 is the second defendant and respondent in C.R.P(PD).Nos.1794, 1796 & 1798 of 2011 is the third defendant in O.S.No.8187 of 2008, on the file of the I Assistant City Civil Judge, Chennai. The petitioner filed the said suit against the respondents and others for declaration that sale deeds dated 20.09.1985, 15.10.1985 and 27.10.1985, bearing Document Nos.3488, 3804 & 4256/1985 executed by the fifth defendant in favour of the first defendant's husband and defendants 2 and 3 registered with the Office of the Sub-Registrar of Anna

Nagar, Chennai as null and void, as the same is not binding on the petitioner and for a permanent injunction, restraining the respondent and others from interfering with the peaceful possession and enjoyment of the suit property. The respondents/defendants 2 and 3 were set exparte on 19.11.2009. They filed I.A.Nos.15937 and 15938 of 2010 to set aside the exparte order dated 19.11.2009.

4. According to the respondents/defendants 2 and 3, they were employed in abroad and suit summons were not served on them. The summons were effected by paper publication and they could not appear before the Court and contest the case. They also filed written statement along with the applications. Petitioner filed counter affidavit through his Power Agent and opposed the said application and denied all the averments made by the respondents in the affidavit. According to the petitioner, the respondents have engaged an Advocate to file vakalat for the hearing on 09.11.2009, but remained absent and no representation was made on 19.11.2009. Therefore, they were set exparte. The respondents were aware of the suit proceedings and they have engaged same Advocate who is appearing for fourth defendant. Trial commenced and PW1 had filed proof affidavit and documents were marked and

prayed for dismissal of the application.

5. The learned Judge, considering the averments in the affidavit and counter affidavit and the fact that the respondents have filed written statement along with the applications and suit is pending for cross examination of PW1, allowed the applications, holding that no prejudice would be caused to the respondents and directed the respondents to pay a sum of Rs.500/- as cost to the petitioner on or before 21.12.2010.

6. The learned counsel appearing for the respondent did not pay the cost and has filed I.A.Nos.892 and 893 of 2011 for extension of time for a period of one week from the date of order of that petition. The learned Judge, extended the time till 27.01.2011.

7. Against the said orders dated 08.12.2010, made in I.A.Nos.15937 and 15938 of 2010 and orders dated 11.01.2011, made in I.A.Nos.892 and 893 of 2011, the four civil revision petitions viz., C.R.P(PD).Nos.1793, 1794, 1797 & 1798/2011 are filed by the petitioner.

8. Against the orders dated 08.12.2010 passed in I.A.Nos.15939 and 15940 of 2010, permitting the power agent of

the respondent in C.R.P(PD).Nos.1795 & 1796 of 2011 respectively, to represent in the suit, the two civil revision petitions viz., C.R.P(PD).Nos.1795 & 1796 of 201 are filed by the petitioner.

9. The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit and grounds of revision. The main contention of the petitioner is that the respondents were aware of the suit proceedings and deliberately they did not participate in the proceedings earlier. Now, when the suit is posted for cross examination of PW1, they have engaged very same Advocate, who is appearing for the fourth defendant and only to drag on the proceedings, he has come out with the present application. The learned Judge, without properly considering the stage of the suit and the fact that the respondents have not given any valid reason to set aside the exparte order, allowed the applications.

10. Per contra, the learned counsel appearing for the respondents/defendants 2 and 3, reiterated the averments in the affidavit and submitted that the respondents had given valid reason for not appearing and stated that they filed written statement along with the petitions and no prejudice will be caused to the petitioner

by allowing the applications.

11. Heard the learned counsels appearing for the petitioner and respondents in all the civil revision petitions and perused the materials available on record.

C.R.P(PD).Nos.1793,1794,1797 & 1798/2011

12. From the materials on record, it is seen that the respondents were set exparte on 19.11.2009. The respondents have filed applications to set aside the exparte order along with the written statement in the month of August 2010. The suit was pending at the stage of cross examination of PW1 by fourth defendant. No cross examination was done and therefore, the learned Judge has allowed the applications, on the ground that no prejudice will be caused to the respondents. The learned Judge also compensated the petitioner by awarding cost. The respondents did not pay the cost within the time specified by the Court and filed I.A.Nos.892 and 893 of 2011 for extension of one week time on the ground that the cost awarded was not written in the 'A' Diary. The learned Judge, considering the reasons given by the respondents, extended the time till 27.01.2011. The learned Judge has

considered all the materials on record and exercised his power properly and allowed the applications. There is no illegality or irregularity warranting interference with the order of the learned trial Judge.

13. In the circumstances, all the four civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

C.R.P(PD).Nos.1795 & 1796/2011

14. According to the power agent of the petitioner, the respondent in both the civil revision petitions are working in abroad and they have executed power of attorney before the consulate officer by respondent in C.R.P.(PD).No.1795/second defendant and before Notary Public by respondent in C.R.P.(PD).No.1796/third defendant. The power of attorney is not registered as per Section 18 of Indian Stamp Act and said power of attorney is not a valid one. The learned Judge, allowed the applications on the ground that the power of attorneys are executed before the consulate officer and Notary Public and they need not be registered. The learned Judge has committed an irregularity in allowing both the

applications. The learned Judge failed to see that any power of attorney executed outside India it is to be adjudicated in India as per the provisions of Section 18 of the Indian Stamp Act. The power of attorney having failed to get adjudicated by a competent Sub-Registrar, is not entitled to represent the respondent, as power of attorney are not valid.

15. In the result, both the civil revision petitions are allowed, setting aside the order of the learned Judge dated 08.12.2010, made in I.A.Nos.15939 and 15940 of 2010. No costs. It is open to the respondent to execute the fresh power of attorney and get the same adjudicated as per law and represent the same.

16.08.2017

Index: Yes/No

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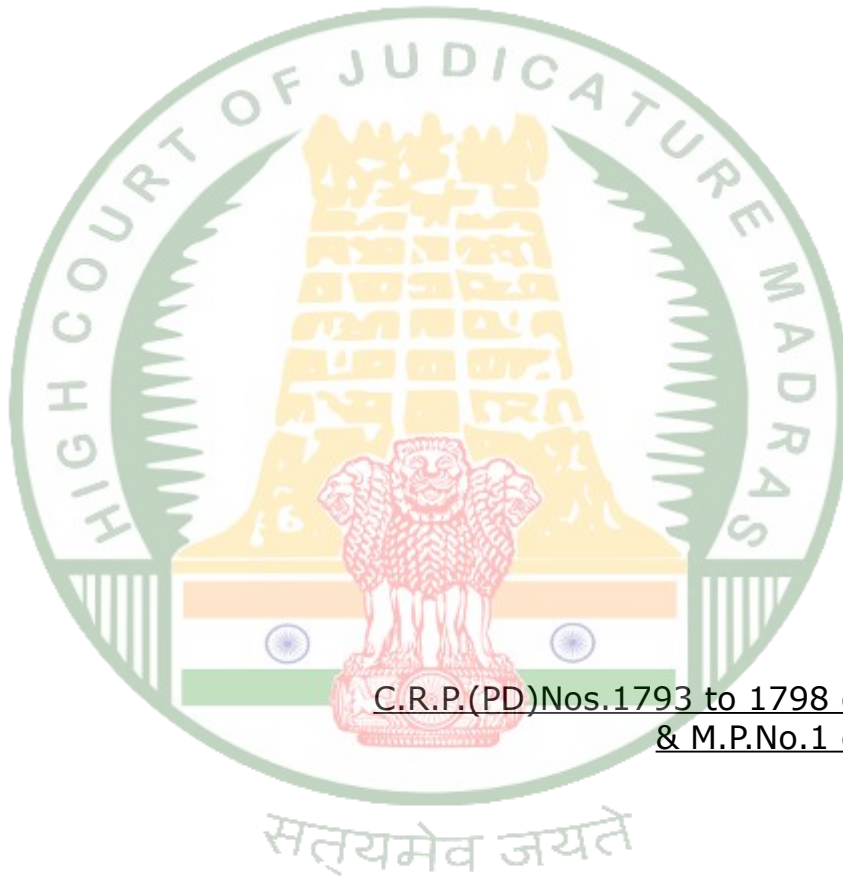
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To

The I Assistant City Civil Judge,
Chennai.

V.M.VELUMANI, J.

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& M.P.No.1 of 2011

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