

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.295 of 2015
& M.P.No.1 of 2015

P.Mani

... Petitioner

Vs.

E.Asinabee

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.11.2014 made in I.A.No.194 of 2014 in O.S.No.60 of 2011 on the file of the Subordinate Judge, Attur.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.L.Rajendran

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 25.11.2014 made in I.A.No.194 of 2014 in O.S.No.60 of 2011 on the file of the Subordinate Judge, Attur.

2.The petitioner is plaintiff and respondent is the defendant in

<http://www.judis.nic.in> O.S.No.60 of 2011 on the file of the Subordinate Judge, Attur. The

petitioner filed the said suit against the respondent for specific performance of agreement of sale dated 04.03.2010 and 21.06.2010. The respondent filed written statement on 11.01.2012 and is contesting the suit. The petitioner filed I.A.No.194 of 2014 under Order VIII Rule 3 and Section 151 of C.P.C to condone the delay in filing the documents earlier and receive the same in evidence on the side of the petitioner. According to the petitioner, he is in possession of the suit property from the date of sale agreement and he is paying the electricity charges for the suit property. The electricity receipts are necessary to prove the possession of the petitioner in the suit property.

3.The respondent filed counter affidavit and opposed the said application on the ground that documents sought to be marked are subsequent to filing of the suit. The respondent has not replied to the notice dated 27.05.2011. Even before sending reply, the petitioner handed over the possession of the suit property to the respondent. From that date onwards only the respondent is paying all the house tax, water tax, electricity charges and property tax. The documents are created for the purpose of the suit and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application, holding that the documents sought to be filed are subsequent to filing of the suit.

5.Against the said order of dismissal dated 25.11.2014 made in I.A.No.194 of 2014 in O.S.No.60 of 2011, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.The suit is for specific performance of agreement of sale dated 04.03.2010 and 21.06.2010 and both the petitioner and respondent are claiming to be in possession. The petitioner along with the plaint, filed house documents, electricity bill receipts and water tax receipt. Now the petitioner is seeking to file electricity bill receipts to show that he is in possession of the property and is paying the electricity charges and also filed original sale deed dated 17.09.2010 in the name of the respondent. The learned Judge dismissed the application on the ground that the documents 1 to 15 sought to be filed are subsequent to the suit. The learned Judge

failed to consider those documents are original documents issued by the Electricity Board and petitioner has filed receipts for payment of statutory dues along with the application. The learned Judge also failed to consider the document no.16, sought to be filed by the petitioner is the original sale deed dated 17.09.2010 in favour of the respondent. The learned Judge has not given any finding as to whether the same can be marked or not. For the above reasons, the Civil Revision Petition is liable to allowed.

8. Accordingly, this Civil Revision Petition is allowed. The impugned order of the learned Judge dated 25.11.2014, made in I.A.No.194 of 2014 in O.S.No.60 of 2011 is set aside. The documents now sought to be marked can be marked subject to objection and relevancy to be decided by appreciating the evidence let in by the parties. No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet: Yes/No
Index: Yes/No
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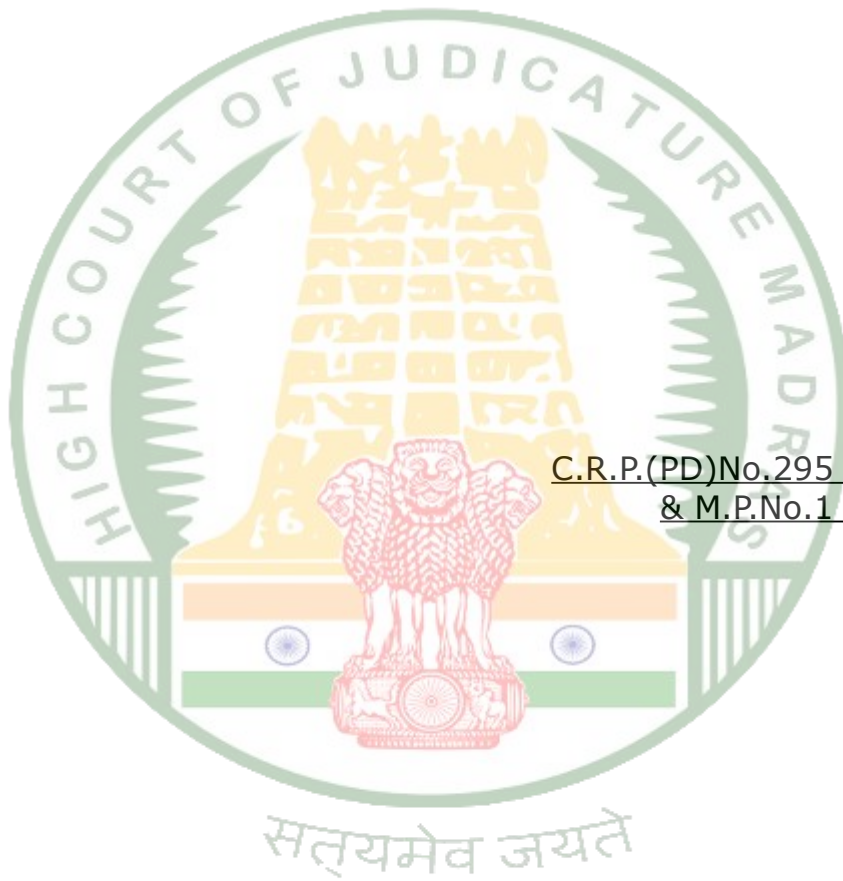
The Subordinate Judge,
Attur.



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V.M.VELUMANI, J.

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