

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.4504 of 2011  
& M.P.No.1 of 2011

1.B.M.Purnachandran  
2.M/s.Savitha Estates and Builders (P) Ltd.,  
Rep.by its Director  
P.Shanthi  
No.218, First Street, 'F' Block  
Anna Nagar East,  
Chennai – 600 102 .. Petitioners

Vs.

1.N.Balraj(Died)  
2.P.Venkatesan  
3.L.Nanjiah(Deceased)  
4.N.Nagesh  
5.V.Dhanalakshmi  
6.B.Raghuram  
7.B.Hariram .. Respondents

(Respondents 5 to 7 brought on record as  
LR's of the deceased first respondent vide  
order of Court dated 09.08.2016 by CTSJ,  
made in C.M.P.No.12834 of 2016 in  
C.R.P.No.4504 of 2011 and M.P.No.1 of 2011)

PRAYER: Civil Revision Petition filed under Article 227 of the  
Constitution of India, against the order dated 03.01.2011 made in  
I.A.No.152 of 2009 in O.S.No.41 of 2007 on the file of the learned  
District Judge, Nilgiris at Udagamandalam.

For Petitioners : Mr.V.V.Prasad

For R1 & R3 : Died

For R2 : No appearance

For R4 : Kingston Jerold

For R5 to R7 : M/s.N.Alamelu Mangai

ORDER

This Civil Revision Petition has been filed against the order dated 03.01.2011 made in I.A.No.152 of 2009 in O.S.No.41 of 2007 on the file of the learned District Judge, Nilgiris at Udagamandalam.

2. The petitioners are the plaintiffs and respondents 1 to 3 are the defendants in O.S.No. 41 of 2007. Pending civil revision petition, the third respondent died. The fourth respondent was impleaded as the legal heir of third respondent. The respondents 5 to 7 are brought on record as legal heirs of the deceased first respondent vide order dated 09.08.2016. The petitioners have filed the said suit for specific performance of agreement of sale dated 30.11.1998 and 04.02.2004, for declaration and permanent

injunction restraining the third respondent from interfering with his possession in respect of the schedule mentioned property. Pending suit, the petitioners filed I.A.No.152 of 2009 under Order XII Rule 6 and Section 151 C.P.C., for passing a decree of specific performance on the admission made by the respondents 1 & 2 and decide the other issues subsequently.

3. According to the petitioners, as per the agreement of sale, the sale price is fixed at Rs.60,00,000/- and petitioners have paid Rs.53,00,000/- to the respondents 1 & 2 and they are willing to pay the balance sale consideration of Rs.7,00,000/- and get the sale deed executed in their favour. The respondents 1 & 2 also admitted the above facts and expressed their willingness to receive the balance sale consideration of Rs.7,00,000/- and execute the sale deed in favour of the petitioners.

4. The third respondent filed counter affidavit and opposed the said application and submitted that he has obtained a preliminary decree and final decree in the suit in O.S.No.66 of 2003 on the file of the Subordinate Court, Ootacamund and subsequently, re-numbered as O.S.No.95 of 2004 on the file of the

District Court, Nilgiris at Udagamandalam. The respondents 1 & 2 borrowed a sum of Rs.15,00,000/- from the third respondent and created a mortgage in respect of the third respondent. In order to defeat the interest of the third respondent, petitioners and respondents 1 & 2 colluded together and entered into an agreement of sale, subsequent to the preliminary decree by using old stamp papers.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the decree on admission under Order XII Rule 6 and decree of specific performance are equitable reliefs and petitioners cannot claim the same as a matter of right and whether the petitioners and respondents 1 & 2 are colluding together or whether the mortgage decree is null and void can be decided only after appreciating the evidence let in by the parties in the suit.

6. Against the order dated 03.01.2011 made in I.A.No.152 of 2009, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and respondents 4 to 7 and perused the materials available on record. Though notice has been served on the second respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

8. From the materials available on record, it is seen that admittedly the third respondent has obtained the preliminary decree and final decree in O.S.No.66 of 2003 and re-numbered as O.S.No.95 of 2004 based on the mortgage created by the respondents 1 & 2. According to the third respondent, the petitioners and respondents 1 & 2 have colluded together and created agreement of sale to defeat the interest of the third respondent as per the mortgage decree.

9. Considering these contentions as well as the attitude of the petitioners and respondents 1 & 2, the finding of the learned Judge that whether the petitioners and respondents 1 & 2 have colluded together or mortgage decree is null and void can be decided only after appreciating the evidence let in by the parties. Further, the learned Judge has rightly held that both decree on admission under

Order XII Rule 6 as well as the decree of specific performance are equitable relief and it is discretion of the Court to grant or reject the same. It is also pertinent to note that the petitioners have come out with the present application after considerable delay and after commencement of trial to drag on the proceedings during the cross examination of the evidence let in by them. For the above reason, I hold that the Civil Revision Petition is devoid of merits and is liable to be dismissed.

10. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2007, the learned District Judge, Nilgiris at Udagamandalam is directed to dispose of the suit as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order.

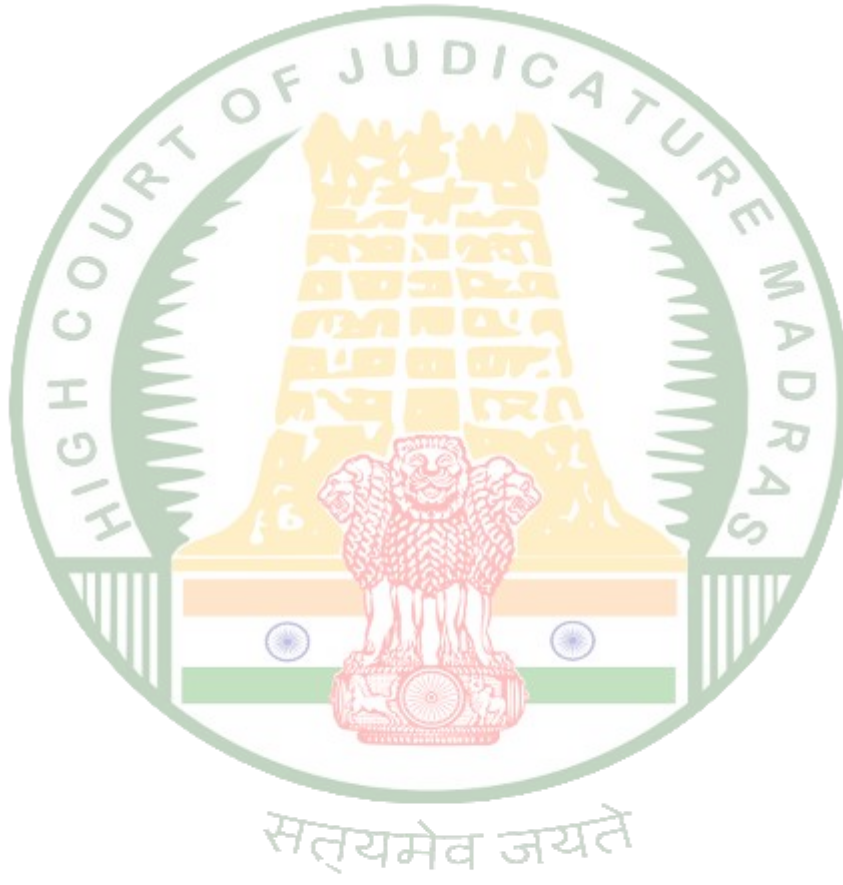
Index : Yes/No  
dm/gsa

To

The District Judge,  
Nilgiris at Udagamandalam.

28.08.2017

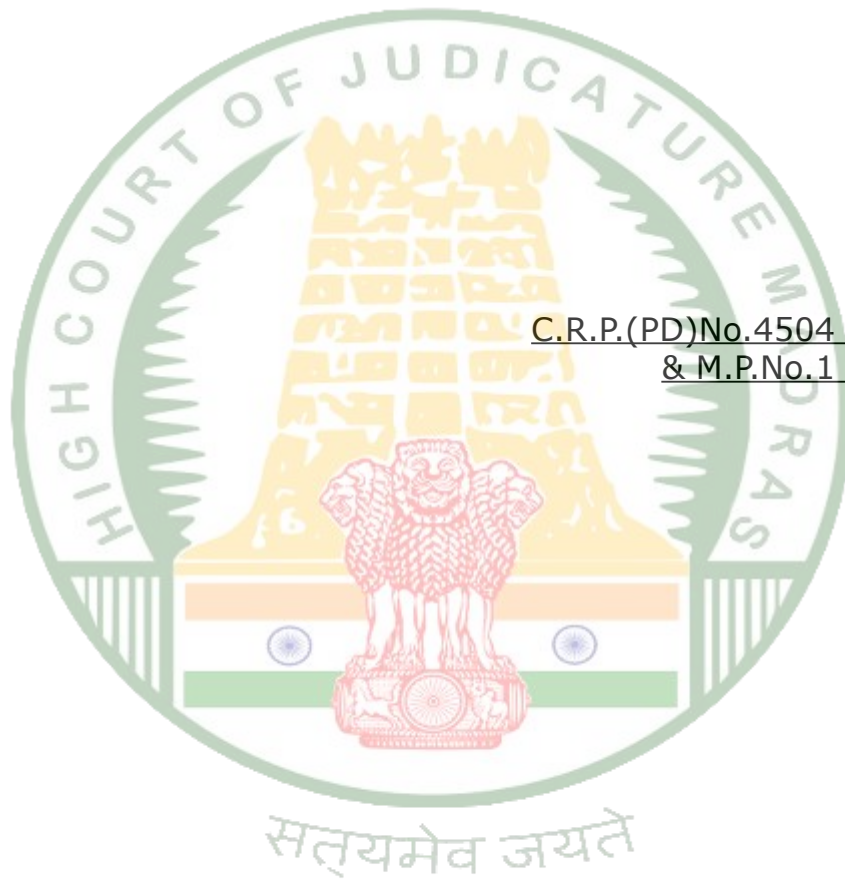
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**V.M.VELUMANI, J.**

dm



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