

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1297 of 2013
and M.P.No.1 of 2013

T.Muthu

.. Petitioner

Vs

Mahalakshmi

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Final orders dated 10.10.2012 passed in I.A.No.67 of 2011 in O.S.No.330 of 2008 on the file of I Additional Subordinate Judge, Salem and to allow the above C.R.P.

For Petitioner : Mr.R.Nalliyappan

For Respondent : M/s.Zeenath Begum

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Final orders dated 10.10.2012 passed in I.A.No.67 of 2011 in O.S.No.330 of 2008 on the file of I Additional Subordinate Judge, Salem.

2. The petitioner is the defendant, the respondent is the plaintiff in O.S.No.330 of 2008 on the file of the I Additional Subordinate Judge, Salem. The respondent filed the said suit against the petitioner for recovery of possession and for mesne profits. The petitioner has filed the present Civil Revision Petition, challenging the order dated 10.10.2012 passed in I.A.No.67 of 2011 filed by him on the file of I Additional Subordinate Judge, Salem. The petitioner filed the said Interlocutory Application under Section 10 of CPC for stay of the present suit. According to the petitioner, he has filed the suit in O.S.No.1972 of 2004 for declaration to declare the sale deed executed by the father of the petitioner as null and void and for injunction. The said suit was dismissed. The first appeal filed by the petitioner in A.S.No.158 of 2006 on the file of Sub Court, Salem was also dismissed on 31.01.2007. The Second Appeal filed by the petitioner in S.A.No.484 of 2008 is pending before this Court. The question and dispute involved in the earlier suit and the present suit are one and the same. Unless, the present suit is stayed till the disposal of the Second Appeal, there will be contradictory Judgment.

3. The respondent filed counter affidavit and submitted that the

relief sought for in both the suits are not one and the same, both the reliefs are different and this Court has not granted any stay of the present suit in the Second Appeal.

4. The learned Judge considering the averments in the affidavit, counter affidavit and the Judgment in O.S.No.1972 of 2004 and materials on record dismissed the application holding that relief sought for in earlier suit and present suit are different and that this Court has not granted any stay in the Second Appeal.

5. Against the said order dated 10.10.2012 made in I.A.No.67 of 2011 in O.S.No.330 of 2008, the present Civil Revision Petition is filed by the petitioner.

6. The learned counsel appearing for the petitioner submitted that the Second Appeal filed by him was admitted by this Court only on 27.09.2016 and the same is pending and the parties and the property are one and the same and therefore prayed for stay of the suit till the disposal of the Second Appeal.

7. The learned counsel appearing for the respondent submitted

that in the Second Appeal the petitioner has not obtained any order of stay of the present suit. The petitioner filed an application in the year 2011 itself. On the other hand, the Second Appeal was admitted only on 27.09.2016 and prayed for dismissal of the Civil Revision Petition.

8. From the materials on record, it is seen that the petitioner has filed O.S.No.1972 of 2004 for declaration to declare the sale deed executed by father of the petitioner as null and void and for injunction. Both trial Court and First Appellate Court have rejected his claim. The issue is pending in this Court in the Second Appeal filed by him in S.A.No.484 of 2008 which was admitted by this Court on 27.09.2016. The respondent has filed the present suit for recovery of possession and for mesne profits. The relief sought for in both the suits are different. This Court has not granted any stay of further proceedings of the present suit. The learned Judge has considered all the above facts in proper perspective and dismissed the application. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Trial Judge dated 10.10.2012.

9. In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

01.11.2017

Index: Yes/No
Internet: Yes/No
Speaking/Non Speaking Order
rna

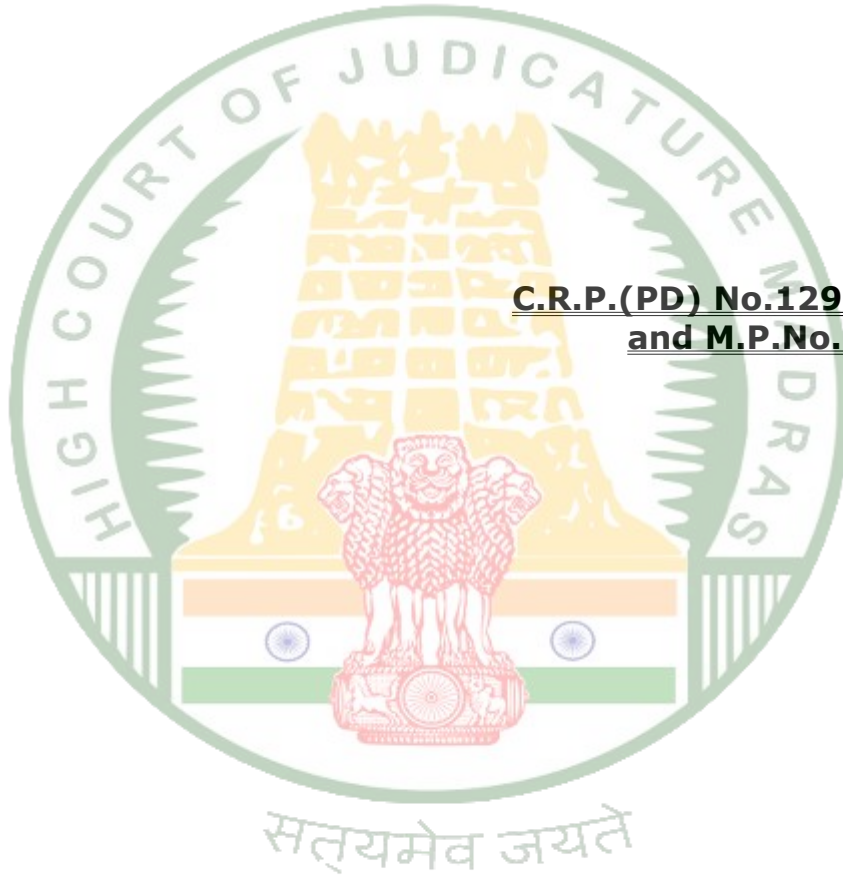
To

The I Additional Subordinate Court,
Salem.



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V.M.VELUMANI,J
rna



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