

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)Nos.637 & 716 of 2016
and
C.M.P. Nos.3292 & 3696 of 2010

1.M.Narasimhan
2.N.Thangaraj
3.N.Usha
4.N.Hemavathy
5.N.Nathiya

.. Petitioners in both CRPs

Vs

R.S.Yuvaneshwaran

.. Respondent in both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 13.08.2015 made in I.A.Nos.2272 & 2273 of 2013 in O.S.No.9553 of 2011 on the file of the IV Additional City Civil Court, Chennai.

For Petitioners (In both CRPs.) : Mr.G.A.Thiyagarajan

For respondent (In both CRPs.) : Mr.A.Suresh

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decreetal order dated 13.08.2015 passed in I.A.Nos.2272 & 2273 of 2013 in O.S.No.9553

of 2011 on the file of the IV Additional City Civil Court, Chennai.

2. The petitioners are the defendants and the respondent is the plaintiff herein. The respondent has filed a suit in O.S.No.9553 of 2011 on the file of the IV Additional City Civil Court, Chennai seeking recovery of money. In the above said suit, the respondent himself examined as P.W.1 and marked Exs.A1 to A9 and subsequently, they came to know that an unregistered document i.e. mortgage deed marked as Ex.P2. In the meantime, the petitioners have filed the application in I.A.No.2272 of 2013 under Section 49 of the Registration Act r/w Section 151 of C.P.C. for rejecting Ex.P2 as inadmissible and also filed the application in I.A.No.2273 of 2013 under Section 33 of the Tamil Nadu Stamp Act for impounding Ex.P2 and directing the respondent herein to pay the deficit stamp duty. The above said applications were dismissed. Challenging the said orders, these civil revision petitions have filed before this Court.

3. According to the petitioners, the petitioners have filed I.A.Nos.2272 & 2273 of 2013 for rejecting the document viz., Ex.P2 since the said document is an unregistered mortgage deed and for impounding the said document. However, the Court below erroneously dismissed the said applications.

4. The contention of the revision petitioners is that the

plaintiff/respondent herein has marked the unregistered mortgage deed as Ex.P2 which is inadmissible in law. The petitioner came to know that Ex.P2 is an unregistered document only at later stage. Further, it is insufficiently stamped. Therefore, Ex.P2 ought to have been rejected and the same has to be impounded for insufficiently stamped. Therefore, the order passed by the trial Court is liable to be set aside.

5. In reply to the learned counsel for the petitioner, the learned counsel for the respondent contended that Ex.P2 was marked only as a receipt for loan transaction. Section 33 of the Tamil Nadu Stamp Act would not attract to the present case. Therefore, the Court below has rightly rejected the contention of the petitioner. There is no reference to the competent authority for impounding the document and for payment of deficit Stamp duty. In support of his contention of the learned counsel for the respondent has relied upon the decision of this Court in *CDJ Law Journal MHC 2298*. In the case of *T.K.Sathiyannarayanan & Others vs. S.jaganathan*, wherein it has been held as follows :

35. On a careful consideration of respective contentions and on an overall assessment of the facts and circumstances of the present case in an attendant fashion, this Court is of the considered view that even

though Ex.A.1 Unregistered Mortgage Deeds dated 12.06.1998 and 21.02.1999 are not to be received in evidence for the purpose of cementing a claim for passing of a mortgage preliminary decree, yet, the said documents can be received in evidence to prove the debt/loan transactions inasmuch as the recitals of Ex.A1 Mortgage Deeds unerringly point out that the two mortgage deeds in issue (in both the suits) can very well be delinked and can be projected in evidence in proof of the debts in issue. Therefore, the views of the trial Court in I.A.Nos.68 & 69 of 2010 in O.S.Nos.396 & 394 of 2003 that Ex.A1- Unregistered Mortgage Deeds dated 12.06.1998 and 21.02.1999 can be marked as Exhibits for the limited extent of establishing the loan transactions cannot be found fault with. Consequently, both the civil revision petitions fail.

6. Therefore, the trial Court has rightly rejected the applications filed by the petitioners on the ground that the said document cannot be treated as mortgage deed, it can be accepted as document for proving loan transaction.

7. In the light of the above, there is no error or illegality in the order passed by the Court below and thus, this Court is not inclined to interfere with the order passed by the Court below.

8. Accordingly, these civil revision petitions are dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

12.12.2017

kkd

Index : Yes/No

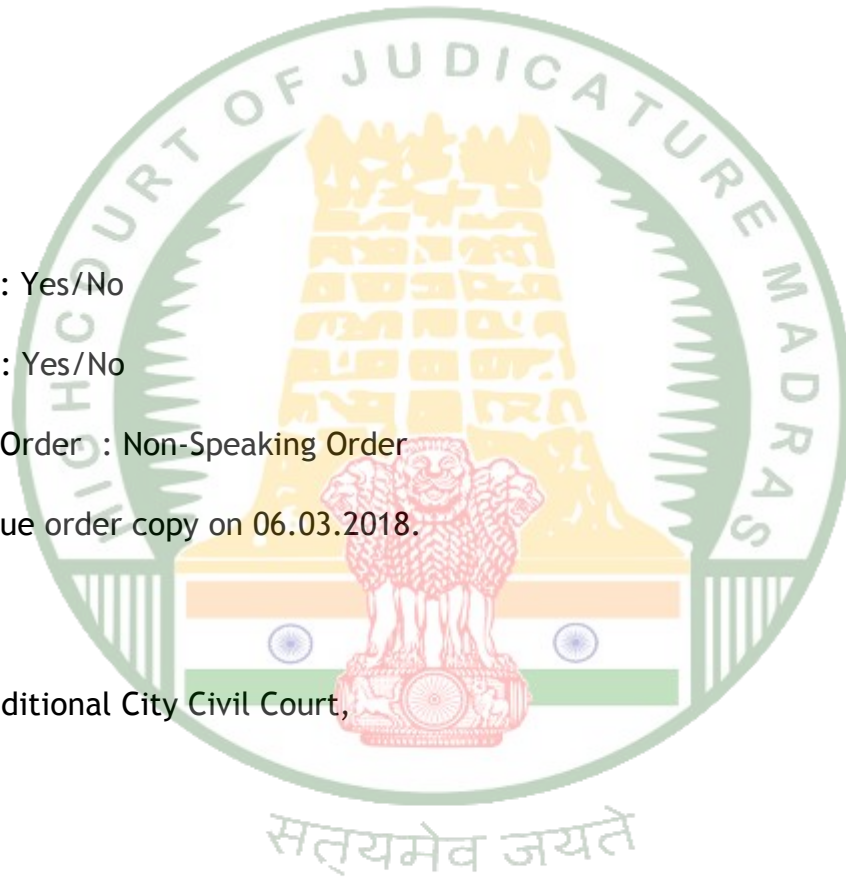
Internet : Yes/No

Speaking Order : Non-Speaking Order

Note : Issue order copy on 06.03.2018.

To

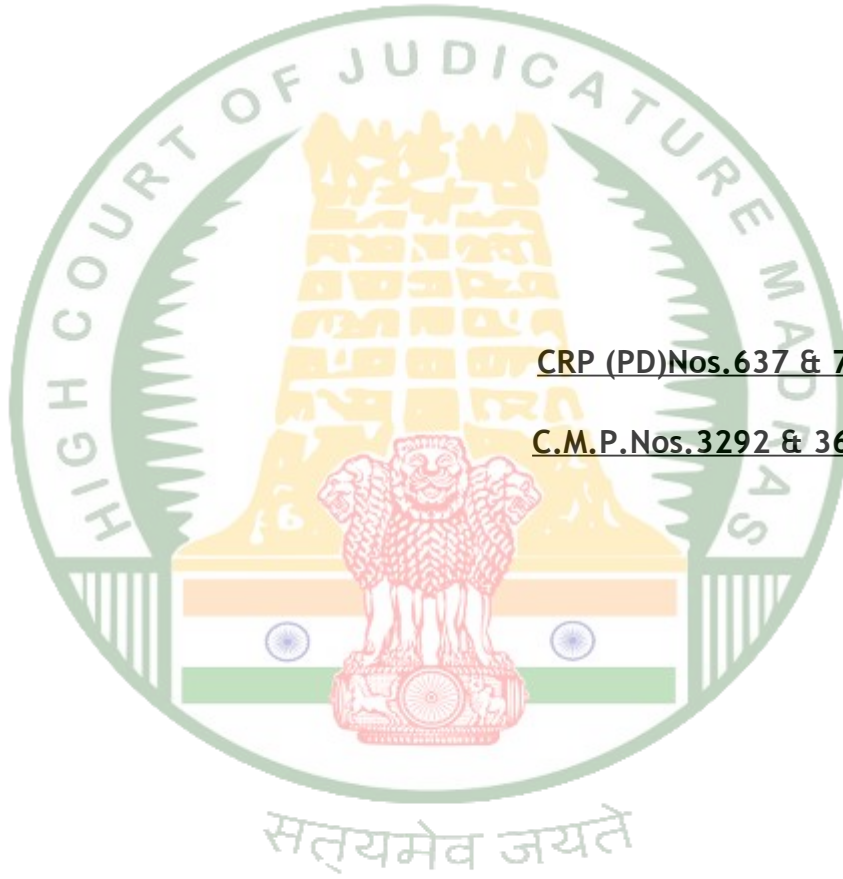
The IV Additional City Civil Court,
Chennai.



WEB COPY

D.KRISHNAKUMAR,J

kkd



CRP (PD)Nos.637 & 716 of 2016
and
C.M.P.Nos.3292 & 3696 of 2010

WEB COPY

12.12.2017