

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.3402 of 2012

A.Anchana Devi

.. Petitioner

vs

M.Sathiyan

.. Respondent

Revision filed under Article 227 of Constitution of India against the order dated 12.4.2012 passed in O.S.SR.No.5511 of 2011 on the file of the District Munsif Court, Krishnagiri.

For Petitioner

: Mr.A.Aravindan
for M/s.Arulselvam
Associates

For Respondent

: No appearance

सत्यमेव जयते

ORDER

This revision petition is filed under Article 227 of the Constitution of India against the order dated 12.4.2012 passed in O.S.SR.No.5511 of 2011 on the file of the District Munsif Court, Krishnagiri.

2. The petitioner is the plaintiff in the unnumbered suit. The suit is filed for granting mandatory injunction against the respondent defendant by directing him to handover the original of the said agreement of 1979 to the petitioner plaintiff and to get the sale deed executed from the petitioner plaintiff by paying the balance of sale consideration.

3. The Court below vide the order under challenge in this revision dated 12.4.2012 held that the suit is barred by limitation. It was also held that the prayer in the suit is vague and the suit has been filed in a speculative manner. In effect, the court below rejected the plaint.

4. Assailing the said order, the present revision petition is filed.

5. I heard Mr.A.Aravindan, learned counsel for the petitioner and perused the documents available on record. The respondent has not chosen to appear either in person or through counsel, despite service of notice.

6. A perusal of the documents available on record shows that two agreements were entered into between the parties and in respect of one of the agreements, which is also of the year 1979, the sale deed had been executed.

7. In respect of the second agreement, which is also of the year 1979 as stated by the petitioner plaintiff, the second suit has been filed by the petitioner plaintiff. It is the specific case of the petitioner that she is unable to produce the agreement, as it is in the custody of the respondent defendant.

8. A reading of the suit prayer shows that the first relief sought by the petitioner plaintiff is to direct the respondent defendant to handover the original of the said agreement of 1979 to the petitioner plaintiff. It is the specific case of the petitioner plaintiff that the notice issued by the respondent defendant asserts that the agreement is valid even after 26 years and it contains a precondition, which is not intimated to the petitioner plaintiff for compliance.

9. The said factual aspect has not been considered by the Court below. The said pleading of the petitioner plaintiff is not rebutted by the respondent defendant. Moreover, it is not as if the parties had never entered into any other agreement. In respect of another agreement entered into between the parties in the same year, i.e., 1979, finality has been attained. Therefore, the existence of another agreement between the same parties cannot just be brushed aside. Certainly, if notice is given to the respondent defendant and the agreement is directed to be produced, in my considered opinion, a finality can be reached.

10. This Court, in the interest of justice, is of the considered opinion that an opportunity should be granted to the petitioner plaintiff to put forth his case, when it is her specific plea that the respondent is in possession of the agreement concerned and the conditions contained therein are unknown to the petitioner plaintiff for ensuring compliance.

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11. In such view of the matter, this revision petition is allowed and the order dated 12.4.2012 passed in O.S.SR.No.5511 of 2011 is set aside and the matter is remitted to the learned District

Munsif, Krishnagiri to number the suit and proceed with the same by issuing summons to the defendant and decide the maintainability of the suit as the preliminary issue and dispose of the same within a period of six months from the date of receipt of a copy of this order.

No costs.

05.01.2017

Note: Issue order copy on 09.04.2018
vs

Index : Yes
Internet : Yes

To

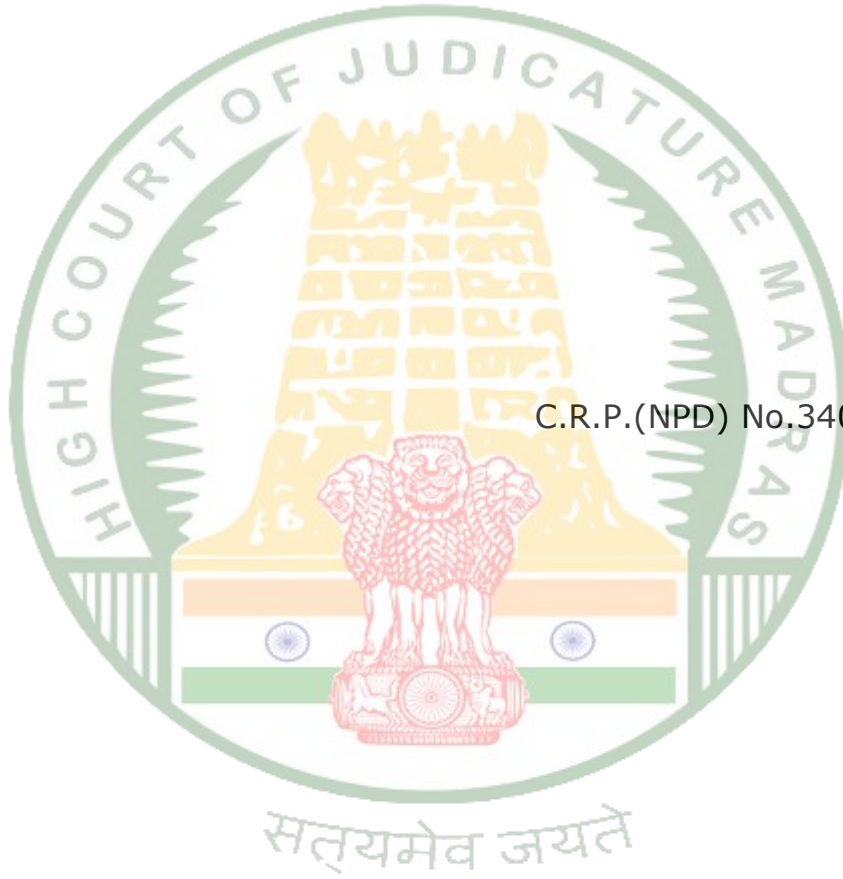
The District Munsif Court
Krishnagiri.



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M.V.MURALIDARAN, J.

VS



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