

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3491 of 2012
M.P.No.1 of 2012

P.Sivalingam

.. Petitioner

Vs.

1. Kayalvizhi

2. Gopathy

..Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India against the fair and decreetal order dated 15.06.2011, made in I.A.No.130 of 2011 in O.S.No.118 of 2010, on the file of the Principal Subordinate Judge, Salem.

For Petitioner : Mr.R.Sunil Kumar

For R1 : Mr.K.Muthuramalingam

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 15.06.2011, made in I.A.No.130 of 2011 in O.S.No.118 of 2010, on the file of the Principal Subordinate Judge, Salem.

2. The petitioner is third party to the suit, first respondent is plaintiff, 2nd respondent is defendant in O.S.No.118 of 2010 on the file of the Principal Subordinate Judge, Salem. The 1st respondent filed suit against the 2nd respondent for specific performance of the agreement of sale dated 22.10.2008. The 2nd respondent filed written statement on 16.08.2010 and is contesting the suit. The petitioner filed I.A.No.130 of 2011 under Order 1, Rule 10(2) read with Section 151 C.P.C., to implead the petitioner as the 2nd defendant in the original suit.

3. According to the petitioner, he is the absolute owner of the suit property and he executed the power of attorney, appointing 2nd respondent as his power agent by fraud and misrepresentation. The petitioner could not cancel the registered power of attorney, as the 2nd respondent is not cooperating and appearing before the Sub Registrar. In view of the same, the petitioner is necessary party to the suit.

4. The first respondent filed counter affidavit and denied various allegations made by the petitioner and submitted that the petitioner admitted the power of attorney executed by him,

appointing 2nd respondent as his agent and agreement of sale entered into by the 2nd respondent, with 1st respondent as agent of the petitioner is valid and legal. Only to drag on the proceedings, the petitioner has come out with the present petition. The 2nd respondent filed separate counter affidavit and denied all the averments and submitted that the power of attorney was not executed by the petitioner by fraud and misrepresentation of the 2nd respondent.

5. The learned Judge, considering all the materials on record and averments in the affidavit and counter affidavit, dismissed the application, holding that the issue in the suit is whether the agreement of sale is valid and legal and whether the 1st respondent is ready and willing to perform his part of the contract. The issue whether power of attorney is executed by the petitioner on misrepresentation and fraud played by the 2nd respondent cannot be decided in the suit.

6. Against that order dated 15.06.2011, made in I.A.No.130 of 2011 in O.S.No.118 of 2010, the present civil revision petition has been filed by the petitioner.

7. Heard the learned counsels appearing for both sides and perused the materials on record.

8. From the materials on record, it is seen that the petitioner has admitted that he had executed the power of attorney and registered the same. Now, the petitioner is taking a stand that he executed and registered the power of attorney on misrepresentation and by fraud played by the 2nd respondent. This issue cannot be decided in the present suit, filed by the 1st respondent, against the 2nd respondent for specific performance of agreement of sale. The petitioner has to establish alleged misrepresentation and fraud played by the 2nd respondent in appropriate proceedings.

9. The learned Judge has considered all the above facts and dismissed the application. In these circumstances, I hold that there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 15.06.2011.

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

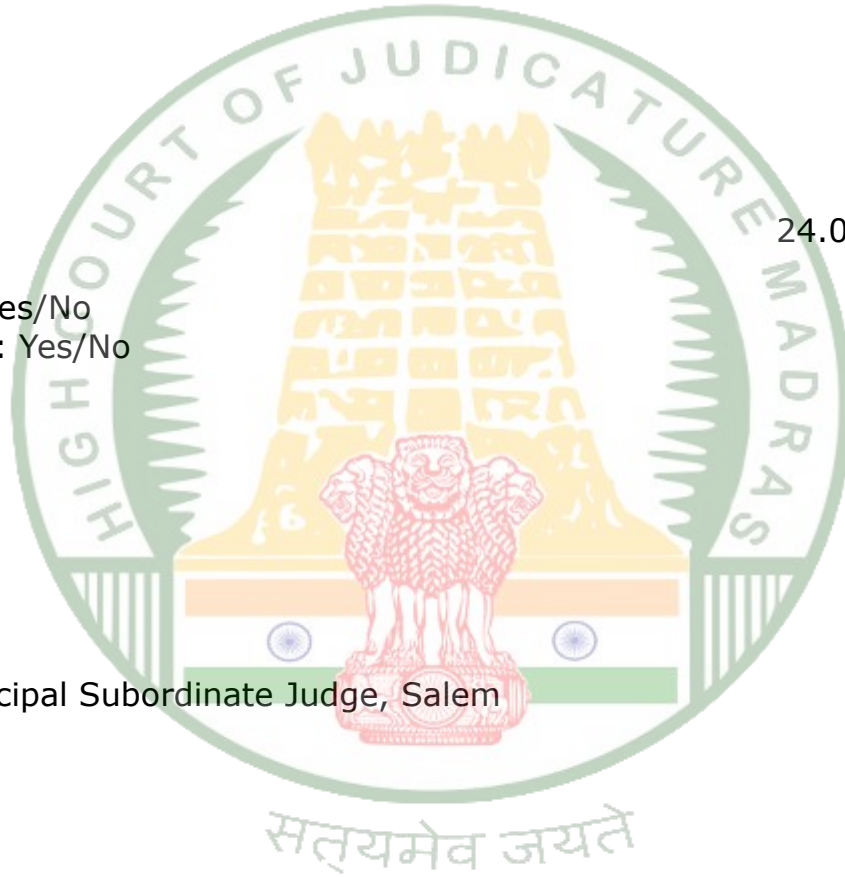
11. Since the suit is of the year 2010, the learned Principal Subordinate Judge, Salem is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

gsa
Index: Yes/No
Internet: Yes/No

24.07.2017

To

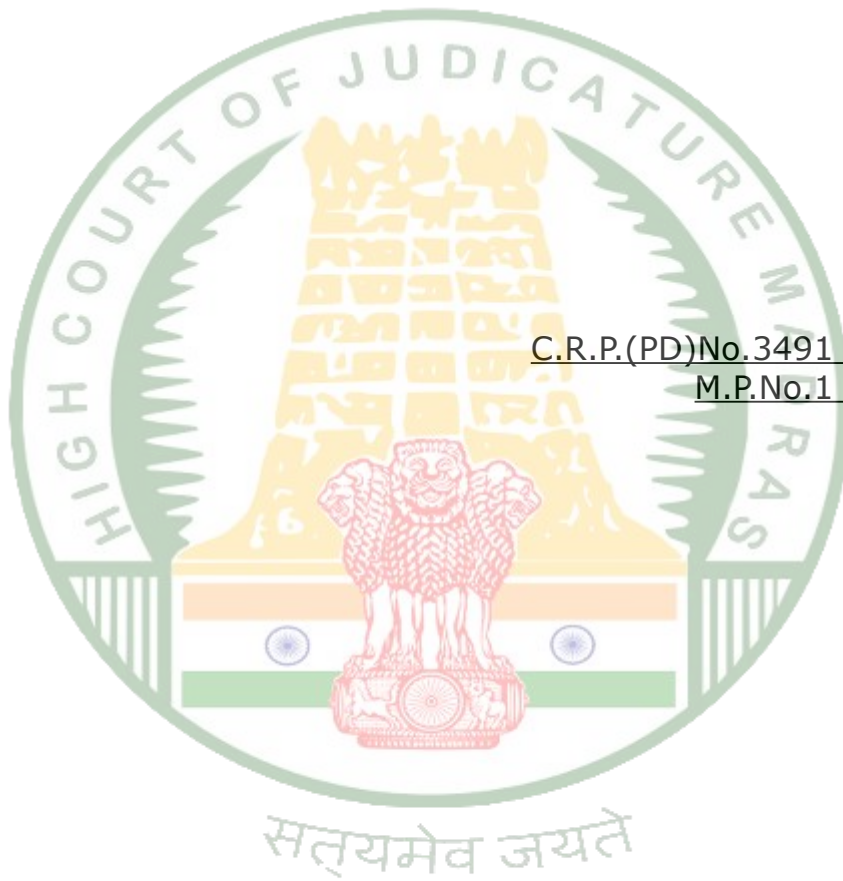
The Principal Subordinate Judge, Salem



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V.M.VELUMANI, J.

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