

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3765 of 2012
& M.P.No.1 of 2012

1.S.Suganya
2.S.Ramgopal
3.S.Vaishnavi

.. Petitioners

Vs.

K.Sivakumar

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.08.2012 passed in I.A.No.503 of 2012 in O.S.No.331 of 2011 on the file of the Principal Subordinate Court, Erode.

For Petitioners : Mr.B.Singaravelu

For Respondent : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.08.2012 passed in I.A.No.503 of 2012 in O.S.No.331 of 2011 on the file of the Principal Subordinate Court,

Erode.

2. The petitioners are the plaintiffs and respondent is the second defendant in O.S.No.331 of 2011. The petitioners filed the said suit against the respondent and other defendants for declaration to declare that the gift deed dated 12.05.1978 is a fictitious, sham and nominal document, not intended to be acted upon and void in law and for permanent injunction. In the suit, the respondent was set exparte on 16.04.2012. The respondent filed I.A.No.503 of 2012 to set aside the exparte order dated 16.04.2012 and to receive the written statement.

3. According to the respondent, on 16.04.2012, when the suit was posted for filing written statement, he was not in station and therefore, he could not appear before the Court and he was set exparte. The respondent also filed written statement along with I.A.No.503 of 2012.

4. The petitioners filed counter affidavit and opposed the said application on the ground that the respondent already filed written statement in the suit on 30.07.2009, when the same was pending before the Principal District Munsif Court, Erode in O.S.No.153 of

2009 and therefore, the respondent is not entitled to file written statement once again. The respondent filed the present application without clean hands by suppressing the above said fact.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, allowed the application holding that the respondent filed written statement, when the suit was pending before the learned Principal District Munsif, Erode and set aside the exparte order and took the written statement on file.

6. Against the said order dated 03.08.2012 made in I.A.No.503 of 2012, the present Civil Revision Petition is filed by the petitioners.

7. Though notice was served on the respondent and his name was printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

8. Heard the learned counsel appearing for the petitioners and and perused the materials available on record.

9. From the materials available on record, it is seen that the respondent did not appear before the Court on 16.04.2012 and he was set exparte. Immediately, the respondent filed application to set aside the exparte order along with written statement. In view of the fact that the respondent has filed the application to set aside the exparte order and that he has filed written statement along with the application, the learned Judge allowed the application. It is pertinent to note that even before the suit was transferred to the present Court, the respondent has filed written statement, when the suit was pending before the Principal District Munsif Court, Erode. Without taking note of the fact that he has already filed written statement, the learned Judge set him exparte. Taking into consideration of the above facts in entirety, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 03.08.2012.

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

14.09.2017

Index : Yes/No
dm/kj

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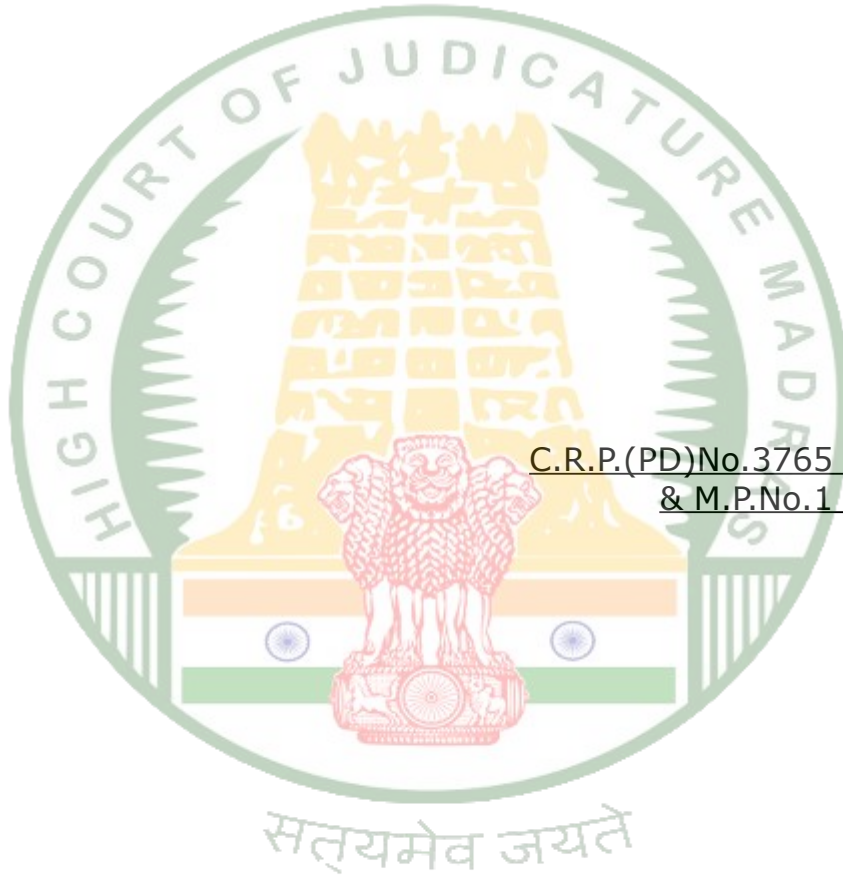
The Principal Subordinate Judge,
Erode.



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V.M.VELUMANI, J.

dm/kj



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