

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.3854 and 3869 of 2012
& M.P.Nos.1, 1 of 2012

N.Sathiyamurthy .. Petitioner in
C.R.P.No.3854 of 2012

1.N.Sathiyamurthy .. Petitioners in
2.Kasthuriyammal C.R.P.No.3869 of 2012

Vs.

Abdul Wahid Sahib .. Respondent in
C.R.P.No.3854 of 2012

1.Abdul Wahid Sahib

2.The Sub-Registrar
Office of the Sub-Registrar
Vaniyambadi, Vellore District.

3.The District Registrar
Vellore District, Vellore-4. .. Respondents in
C.R.P.No.3869 of 2012

C.R.P.No.3854 of 2012 filed under Article 227 of the
Constitution of India, against the fair and decretal order dated

31.07.2012 made in I.A.No.47 of 2011 in O.S.No.16 of 2010 on the file of the Additional District Court-cum-Fast Track Court No.II, Tirupattur, Vellore District.

C.R.P.No.3869 of 2012 filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.08.2012 made in I.A.No.22 of 2011 in O.S.No.16 of 2010 on the file of the Additional District Sessions Court-cum-Fast Track Court No.III, Tirupattur, Vellore District.

For Petitioners : Mr.V.Jeeva Giridharan
For R1 : Mr.G.Rajan
For R2 and R3 : Mr.T.Jayaramaraj
Govt. Advocate (CS)

COMMON ORDER

C.R.P.No.3854 of 2012 is filed against the fair and decretal order dated 31.07.2012 made in I.A.No.47 of 2011 in O.S.No.16 of 2010 on the file of the Additional District Court-cum-Fast Track Court No.II, Tirupattur, Vellore District.

2. C.R.P.No.3869 of 2012 is filed against the fair and decretal order dated 31.08.2012 made in I.A.No.22 of 2011 in O.S.No.16 of

2010 on the file of the Additional District Sessions Court-cum-Fast Track Court No.III, Tirupattur, Vellore District.

3. The petitioners are the defendants 1 & 2, first respondent is the plaintiff and the respondents 2 and 3 are the defendants 3 & 4 in O.S.No.16 of 2010 on the file of the Additional District Court-cum-Fast Track Court, Tirupathur, Vellore District. The respondent in C.R.P.No.3854 of 2012, who is the first respondent in C.R.P.No.3869 of 2012, filed suit for specific performance of agreement of sale dated 17.01.2003 and for permanent injunction. The first petitioner/first defendant filed written statement on 23.10.2009 and is contesting the suit. The suit was posted for trial on 25.03.2011. The first respondent/plaintiff did not appear on that date. The suit was dismissed for default. The first respondent/plaintiff filed I.A.No.22 of 2011 for restoration of suit. The first petitioner/first defendant filed I.A.No.47 of 2011 for a direction to the first respondent/plaintiff to produce his pass port into the Court.

4. According to the first petitioner/first defendant, when the first respondent/plaintiff had alleged to have signed in the affidavit filed in support of I.A.No.22 of 2011 for restoration of the suit, he

was not in India and hence, he opposed the said application on the ground that the first respondent/plaintiff has not signed in the affidavit.

5. The first respondent/plaintiff filed counter affidavit in I.A.No.47 of 2011 and submitted that the signature in the affidavit filed in support of I.A.No.22 of 2011 is his signature and the petitioners filed the said application only to drag on the proceedings.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed I.A.No.47 of 2011 holding that only the first respondent/plaintiff can dispute the signature found in the affidavit filed in support of I.A.No.22 of 2011, but the first respondent has admitted the signature as his signature. The learned Judge allowed I.A.No.22 of 2011 in order to give an opportunity to the first respondent/plaintiff to put forth his case on merits on payment of costs of Rs.250/- to each of the petitioners/defendants 1 and 2.

7. Against the order dated 31.07.2012 made in I.A.No.47 of 2011 and order dated 31.08.2012 made in I.A.No.22 of 2011, the

present two civil revision petitions are filed by the petitioners/defendants 1 and 2.

8. Heard both sides and perused the materials on record.

9. As far as C.R.P.No.3869 of 2012 is concerned, it is filed against the order allowing the application to restore the suit. The first respondent/plaintiff filed O.S.No.16 of 2010 and the same was dismissed for default. Therefore, the respondent filed I.A.No.22 of 2011 for restoration of the suit.

10. It is well settled that the application to condone the delay, set aside exparte decree/order and restoration must be considered liberally by the Courts. The parties must be given an opportunity to put forth their case on merits and should not be shut down at the threshold itself.

11. In the present case, the learned Judge allowed the application to restore the suit in order to give an opportunity to the first respondent/plaintiff to put forth his case on merits. The learned Judge has compensated the inconvenience caused to the petitioners

by awarding costs to each of the petitioners. In the circumstances, I hold that there is no irregularity or illegality in the order of the learned Judge dated 31.08.2012 made in I.A.No.22 of 2011 warranting interference by this Court.

12. As far as C.R.P.No.3854 of 2012 is concerned, the first respondent/plaintiff has admitted that he alone signed in the affidavit filed in support of I.A.No.22 of 2011. In view of these facts, the learned Judge dismissed the application filed by the petitioners for a direction to the first respondent/plaintiff to produce his passport, by giving cogent and valid reason. In the circumstances, I hold that the order of the learned Judge dated 31.07.2012 made in I.A.No.47 of 2011 does not warrant any interference by this Court.

13. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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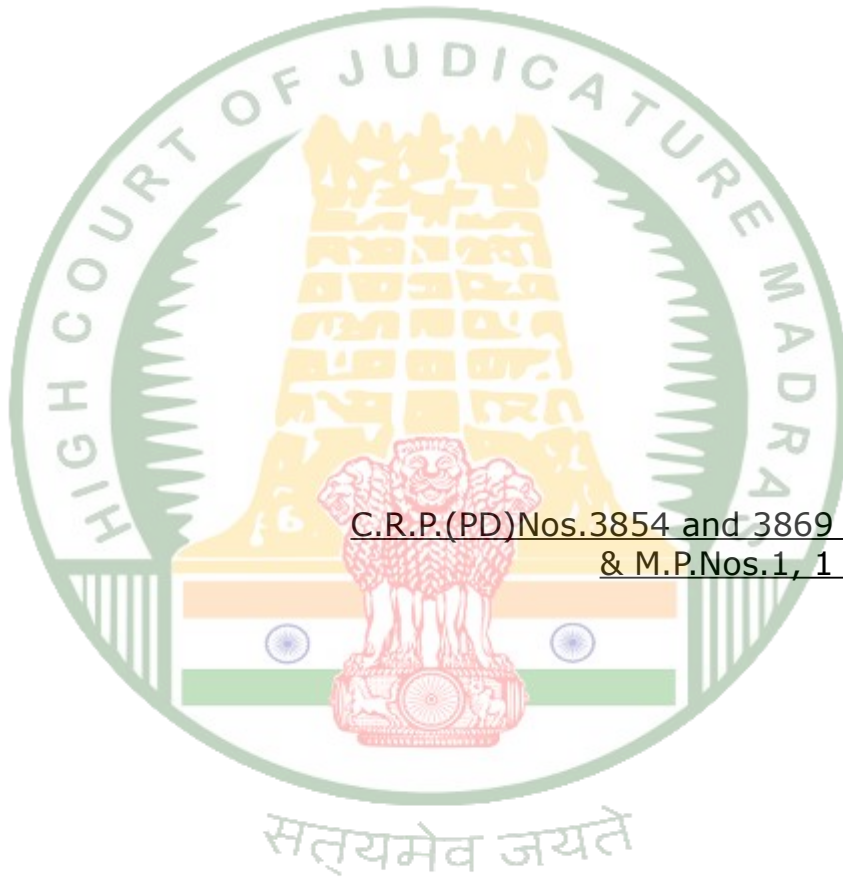
Index:Yes/No

Speaking/Non-speaking order:Yes/No

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V.M.VELUMANI, J.

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& M.P.Nos.1, 1 of 2012

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