

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(PD).No.1427 of 2017

and

CMP.No.6634 of 2017

K.Jothi Babu

.. Petitioner

Vs.

1.S.Thirupathi

2.K.Sekar

.. Respondents

PRAYER:The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and Decretal dated 06.04.2017 in I.A.No. 143 of 2017 in O.S.No.53 of 2017 on the file of the Sub Court, Vaniyambadi.

For petitioner : Mr.M.Chidambaram

For Respondents : Mrs.S.Meenakumari

ORDER

This civil revision petition is filed to set aside the fair and decretal order dated 06.04.2017 passed in I.A.No.143 of 2017 in O.S.No.53 of 2017 on the file of the Sub Court, Vaniyambadi.

2. The petitioner/plaintiff herein has filed a suit in O.S.No.53 of 2017 before Sub Court, Vaniyambadi seeking declaration, permanent injunction and peaceful possession of the suit property. In the aforesaid suit, the petitioner has filed an application of I.A.No.143 of 2017 under Order 39 Rule 1 and 2 and 151 of C.P.C. seeking permanent injunction. In the aforesaid application, the court below has allowed the application, by giving an opportunity to the respondents to pay stamp duty at R.220/- as a sale agreement dated 02.12.2012. The petitioner has not rely on the said document at the time of trial. Challenging the aforesaid order, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit the petitioner has filed an application under Order 39 Rule 1 and 2 and Section 151 of CPC for permanent Injunction. The trial Court has traversed beyond the scope of the prayer and passed a separate order by granting an opportunity to the respondent to pay stamp duty of the sale agreement dated 02.12.2012. It is further submitted that the respondent has not filed any application for marking of the documents. Therefore, passing of the order, is without jurisdiction and the same is contrary to the procedure of law. Hence, the order passed by the Court below is liable to set aside.

4. The learned counsel for the respondents submitted that marking of the sale agreement is only for a collateral purpose. During the cross examination, the respondent has not filed any application for marking of the documents.

5. Considering the above said submission made by the learned counsel for both sides, it is made clear that the respondent herein has not filed any application for marking of the documents.

6. It is an unfortunate that the Court below has passed an order by permitting the respondent to pay stamp duty of sale agreement without filing application by the respondent. Therefore, the order passed by the Court below is without jurisdiction and beyond the scope of the prayer in the Instant Application.

7. In view of the above, the impugned order passed in I.A.No.143 of 2017 in O.S.No.53 of 2017 on the file of the Sub Court, Vaniyambadi, is hereby set aside. However, this order will not stand in the way, to file an appropriate application by the respondent before the Court below at the appropriate stage as per law.

D.KRISHNAKUMAR,J.

kkd

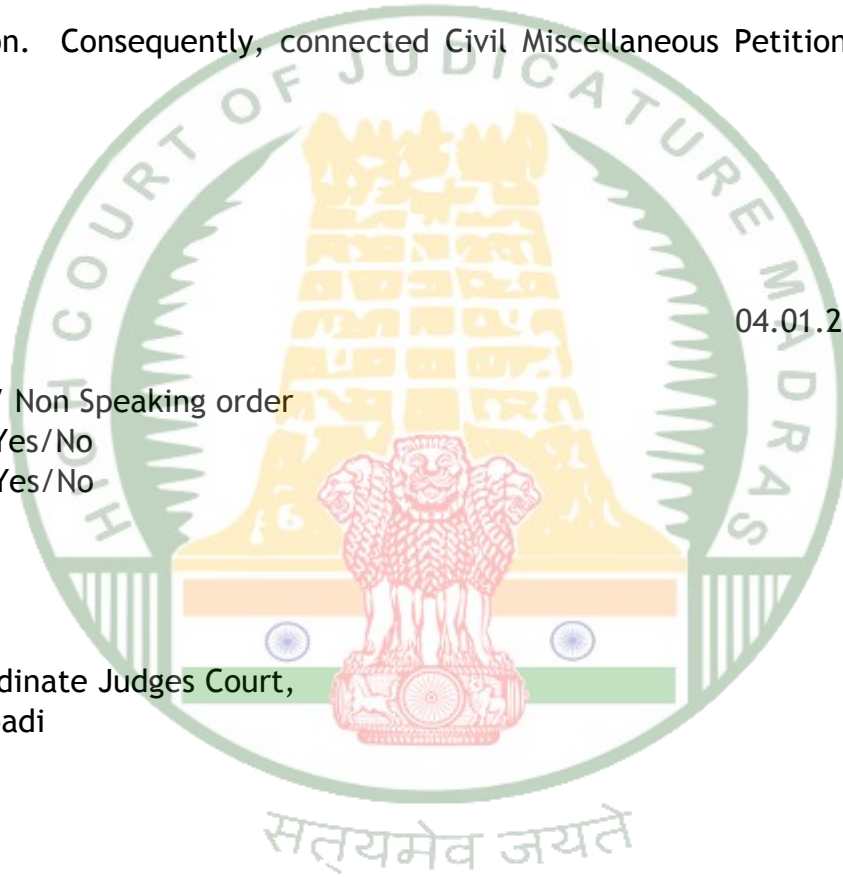
8. Accordingly, the Civil Revision Petition is allowed with the above observation. Consequently, connected Civil Miscellaneous Petition is closed.
No costs.

04.01.2018

Speaking / Non Speaking order
Index :Yes/No
Internet :Yes/No
kkd

To

The Subordinate Judges Court,
Vaniyambadi



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