

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.2139 of 2017

1.Dhanalakshmi
2.E.Krishnan

.. Petitioner

Vs

S.P.Veerappan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 03.03.2017 made in I.A.No.71 of 2017 in O.S.No.165 of 2016 on the file of III Additional District Court, Poonamallee.

For Petitioner : Mr.K.Venkatasubban

For Respondent : Mr.D.Veerasekaran

ORDER

This Civil Revision Petition is filed to set aside the the order dated 03.03.2017 passed in I.A.No.71 of 2017 in O.S.No.165 of 2016 on the file of III Additional District Munsif Court, Poonamallee.

2. The respondents herein have filed a suit in O.S.No.165 of 2016 before the learned III Additional District Munsif, Poonamallee seeking specific performance against the petitioners on the basis of unregistered agreement of sale deed dated 08.01.2016 and registered sale agreement dated 12.02.2016. In the said suit, the petitioner has filed an application in I.A.No.71 of 2017 in O.S.No.165 of 2016 under Order VII Rule 11 (d) of C.P.C. to reject the plaint.

3. According to the learned counsel for the petitioner, the respondent has relied upon unregistered agreement for the relief as prayed for in the suit. The above said unregistered agreement cannot be relayed upon without impounding the document under Section 33 of the Tamil Nadu Stamp Act. Hence, the present application has been filed to reject the plaint in the light of the proviso under Sections 17(1A) and 49 of the Indian Registration Act, the court below has dismissed the aforesaid application by holding that the contention raised by the petitioner can be decided at the time of the trial. Further, it is stated that under the Registration Act, the sale agreement has compulsorily to be registered and therefore, relying upon the said sale agreement would cause fatal to the suit. Therefore, the order passed by the Court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would submit that the aforesaid unregistered sale agreement has been marked at the time of evidence of P.W.1. The petitioner has not objected the marking of the document. Thereafter, belated application filed under Section Order VII Rule 11(a) to reject the plaint. The said application filed by the petitioner is only to delay the proceedings in the aforesaid suit. When the trial itself is commenced, the respondent has examined as P.W.1 and at this stage, the present application has been rightly dismissed with the reason stated in the order.

5. I have heard the learned counsel for both sides and perused the materials available on record.

6. It is an admitted fact that the respondent has filed the aforesaid suit in O.S.No.165 of 2016 and the written statement has been filed on 17.03.2017. Thereafter, the suit was posted for trial and the plaintiff was examined as P.W.1. At this stage, the present application has been filed under Order VII Rule 11 of C.P.C.

7. The unregistered agreement cannot be relied upon by the respondent, in the light of Section 49 of the Registration Act without

impounding the document under Sections 33 (A) and 35 of the Indian Stamp Act, the aforesaid contention of the petitioner can be agitated at the time of the trial in the suit. Therefore, the Court below has rightly observed that the parties can raise all the objections at the time of the argument in the said suit. Therefore, the present application filed under Order VII Rule 11 of C.P.C. to reject the plaint has rightly dismissed by the Court below. Therefore, this Court is not inclined to entertain the civil revision petition as there is no prima facie case made out. Hence, there is no error or illegality in the order passed by the Court below.

8. Considering the submission made by the learned counsel for both sides, this Court is inclined to pass the following order:

i) The impugned order passed in I.A.No.71 of 2017 in O.S.No.165 of 2016 on the file of the learned III Additional District Judge, Poonamallee, is hereby confirmed.

ii) The Court below is directed to dispose of the suit in O.S.No.165 of 2016 as expeditiously as possible.

8. with the above observation, this Civil Revision Petition is dismissed .

No costs. Consequently, connected miscellaneous petition is closed.

11.01.2018

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Note : Issue Order copy on 22.01.2018

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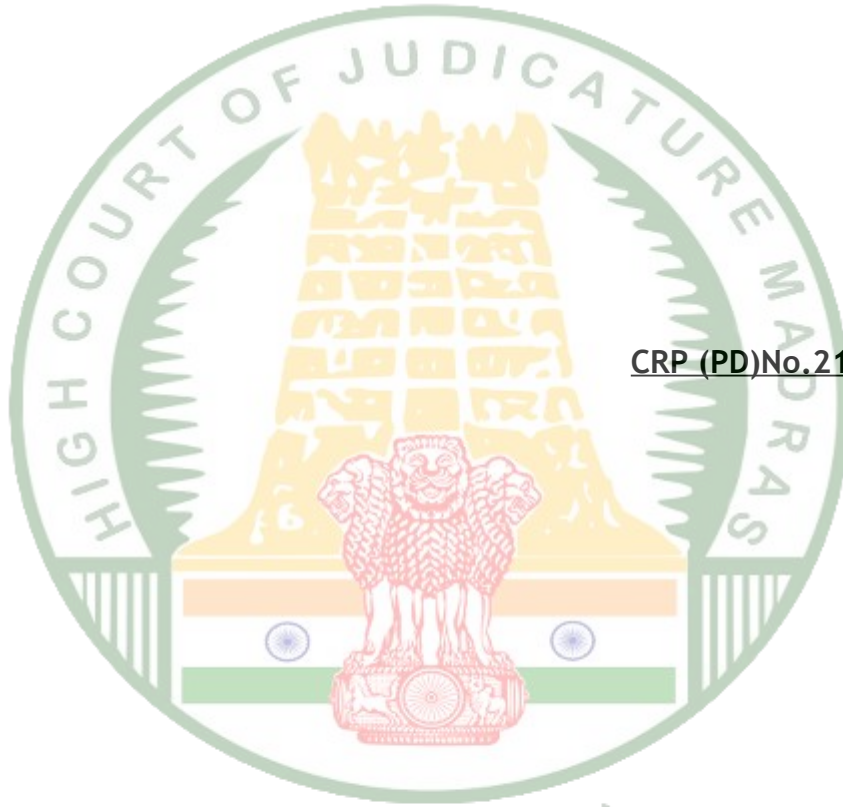
III Additional District Court,
Poonamallee.



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D.KRISHNAKUMAR,J.

Kkd



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