

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1087 of 2015
& M.P.No.1 of 2015

1.K.Dharmamurthy
2.B.Sulochana

.. Petitioners

Vs.

1.T.V.R.Chits Funds
Rep. By its Prop. V.Ramasami
Carrying on business at
No.30, KSG Higher Secondary School Road,
Tiruppur.

Krishnasami Gounder (Deceased)
K.Suppathal (Deceased)
K.Jegannathan (Deceased)
K.Deivasigamani (Deceased)
2.J.Rameshkumar
3.R.Vanitha

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.08.2014 made in I.A.No.933 of 2009 in O.S.No.372 of 1998 on the file of the Subordinate Court, Tiruppur.

For Petitioner : Mr.Thenmozhi Shivaperumal

For R1 : Mr.R.Bharath Kumar

For R2 & R3 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 14.08.2014 made in I.A.No.933 of 2009 in O.S.No.372 of 1998 on the file of the Subordinate Court, Tiruppur.

2.The petitioners are defendants 2 and 6, first respondent is the plaintiff and respondents 2 and 3 are the defendants 7 and 8 in O.S.No.372 of 1998 on the file of the Subordinate Court, Tiruppur. The first respondent originally filed the said suit against one Krishnasamy Gounder/first defendant and first petitioner for specific performance of agreement of sale dated 03.10.1991. Pending suit, the first defendant/Krishnasamy Gounder died. His legal heirs were impleaded as defendants 3 to 6. The said deceased Krishnasamy Gounder/first defendant filed written statement on 20.06.2000. The deceased third defendant filed written statement on 19.07.2004 and was contesting the suit. The suit was posted in the special list on 01.02.2005 for trial. The first respondent did not appear on that day and there was no representation on his behalf and the suit was dismissed for default. The first respondent filed application on 02.03.2005 to restore the suit. The said application was returned on various dates for compliance of the returns mentioned therein.

Finally, in the year 2009, the application was numbered as I.A.No.933 of 2009. According to the first respondent, he was 52 years old and was suffering from knee pain and due to the same, he could not appear before the Court on 01.02.2005. The failure to appear before the Court on 01.02.2005 is neither wilful nor wanton.

3.The first petitioner filed counter affidavit and contended that after dismissal of the suit on 01.02.2005,he received notice in the application filed by the first respondent only in the month of February, 2010. Mean while, the respondents 2 & 3 and petitioners spent Rs.15,00,000/- for construction of the house in the suit property. The suit is for specific performance of agreement of sale. The first respondent must be always ready and wiling to perform his part of contract. In the present case, the first respondent has not taken steps to number the application for more than five years. The first defendant and first petitioner did not agree to sell the suit property to first respondent. The first respondent is running a Chit Fund. The first respondent and his father are money lenders. The first defendant and first petitioner are subscribers in the Chit and they have borrowed money for the business. Only as a security for the amount due, the first respondent pressurised them to execute the agreement of sale and contended that the first defendant and

first petitioner never agreed for sale of the property and prayed for dismissal of the application.

4.The second petitioner filed separate counter affidavit and contended that after dismissal of the suit, she has entered into an agreement of sale on 10.06.2009 with one D.Pushpa, wife of Dharmalingam, to sell her share in the suit property and prayed for dismissal of the application.

5.The learned Judge allowed the application on the ground that the first respondent has filed application for restoration of the suit within 30 days and he has filed medical certificate to show that he was suffering from knee pain and first respondent also had stated in the affidavit that on 01.02.2005, he was suffering from knee pain.

6.Against the said order dated 14.08.2014 made in I.A.No.933 of 2009 in O.S.No.372 of 1998, the present Civil Revision Petition is filed by the petitioners.

7.Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the learned Judge failed to see that first respondent has filed the suit in the year 1998 for specific performance of agreement of sale dated 03.10.1991. When the suit was listed in the special list, the first respondent did not appear and for his non-appearance, the suit was dismissed on that day. The first respondent filed application on 02.03.2005 and the said application was numbered only in the year 2009. The first respondent did not substantiate his case that he was suffering from knee pain on 01.02.2005. The medical certificate produced by the first respondent relates to the period from 30.12.2004 to 05.01.2005 and it does not relate to 01.02.2005, the date on which he failed to appear before the Court. Further, the Doctor who gave the certificate is not an Ortho doctor. The learned Judge failed to consider the fact that even though the first respondent filed application on 02.03.2005, he was not vigilant enough in getting the said application numbered within reasonable time. The application was numbered only in the year 2009 and notice was served on the first respondent in the month of February 2010. Mean while, the first petitioner has constructed house in the suit property by spending Rs.15,00,000/- and second petitioner has entered into an agreement with one D.Pushpa with regard to sale of

her share in the property. The learned Judge has not appreciated the counter filed by the petitioners and allowed the application only on the ground that application was filed within the time limit and the first respondent has stated in the affidavit that on 01.02.2005, he was suffering from knee pain. The learned Judge failed to consider all the above facts and allowed the application on erroneous grounds. For the above reasons, the order passed by the learned Judge dated 14.08.2014 made in I.A.No.933 of 2009 in O.S.No.372 of 1998 is liable to be set aside and is hereby set aside.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.02.2018

Index : Yes/No

Speaking Order / Non-speaking order

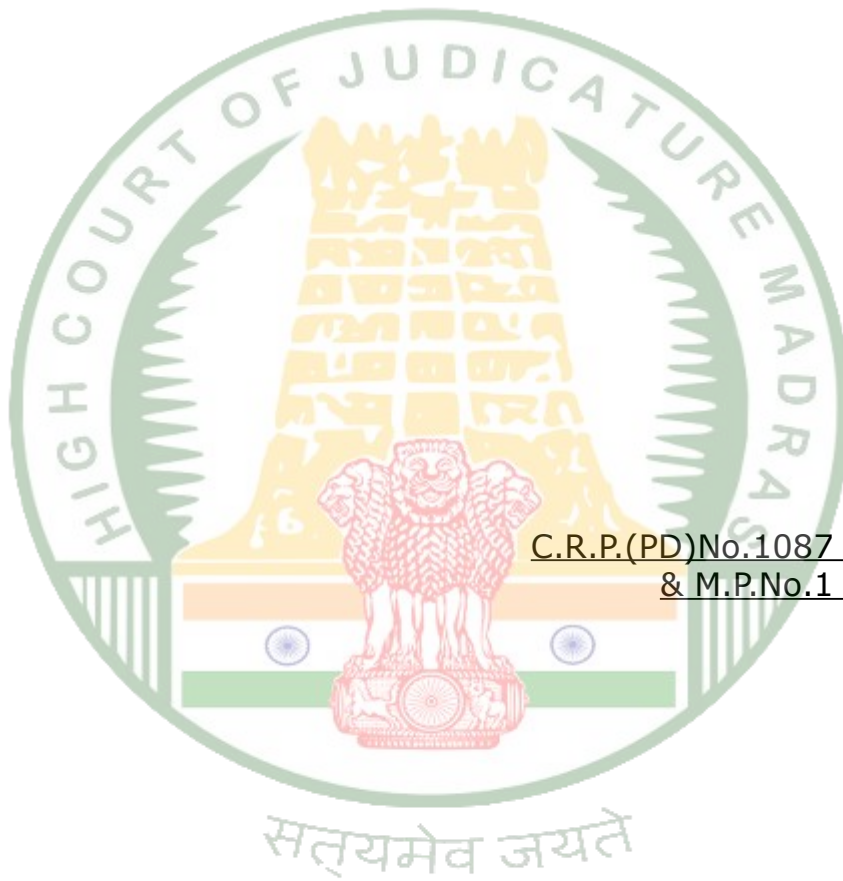
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To

The Subordinate Court,
Tiruppur.

V.M.VELUMANI, J.

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