

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4082 & 4083 of 2014
and M.P.Nos.1 and 1 of 2014

V.Chitra

.. Petitioner in
both C.R.P.s

Vs.

1.S.Rajeswari
2.R.Lakshmi
3.V.R.Kannakumar

.. Respondents
in both C.R.P.s

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 02.08.2014 made in C.M.A.Nos.11 & 12 of 2013 on the file of the First Additional District Judge, Coimbatore, reversing the fair and decretal order dated 11.01.2013 made in I.A.Nos.840 and 839 of 2012 in O.S.No.420 of 2012 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.M.Velmurugan

For R1 : Mr.B.Mohan

For R2 & R3 : No appearance

COMMON ORDER

These Civil Revision Petitions are filed to set aside the judgment and decree dated 02.08.2014 made in C.M.A.Nos.11 & 12 of 2013 on the file of the First Additional District Judge, Coimbatore,

reversing the fair and decretal order dated 11.01.2013 made in I.A.Nos.840 and 839 of 2012 in O.S.No.420 of 2012 on the file of the Principal Subordinate Judge, Coimbatore.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioner is the plaintiff, first respondent is the third party and the respondents 2 and 3 are the defendants in O.S.No.420 of 2012 on the file of the Principal Subordinate Judge, Coimbatore. The first respondent/third party filed I.A.No.840 of 2012 for impleading herself as the 3rd defendant in O.S.No.420 of 2012 and I.A.No.839 of 2012 to vacate the order of interim injunction as against the schedule mentioned property in I.A.No.463 of 2012. According to the first respondent, she has purchased the property from third respondent and she is in possession of the same. The petitioner, after obtaining the interim injunction, interfered with her possession and enjoyment of the property. In view of the purchase, she is necessary and proper party to the suit. In view of the fact that she is the owner of the property by purchase, prayed for raising the interim injunction.

4.The petitioner filed counter affidavit and contended that sale in favour of the first respondent is sham and nominal and it is not supported by any sale consideration. Therefore, the first respondent is not necessary and proper party to the suit. Trial Court, by the order dated 11.01.2013, dismissed both the applications.

5.The first respondent filed C.M.A.Nos.11 and 12 of 2013 challenging the said order. The learned Appellate Authority, considering the sale deeds purchased by the first respondent, by the judgment and decree dated 02.08.2014, allowed both the appeals, reversing the order of the Trial Court.

6.Against the judgment and decree dated 02.08.2014 made in C.M.A.Nos.11 & 12 of 2013, reversing the fair and decretal order dated 11.01.2013 made in I.A.Nos.840 and 839 of 2012 in O.S.No.420 of 2012, the petitioner has come out with the present two Civil Revision Petitions.

7.Heard the learned counsel for the petitioner 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 first respondent has purchased the property from third respondent.

The petitioner is not denying such purchase, but contending that it is only sham and nominal and it is not a valid sale consideration as first respondent has not paid any sale consideration. Whether the purchase by the first respondent is valid or not can be decided only by appreciating the evidence let in by the parties. In view of the registered sale deed in favour of the first respondent, she is necessary and proper party to the suit to decide the issue in the suit. The reasoning of the Trial Court is that the share of the petitioner and respondents 2 and 3 can be decided in the suit and if the share of the respondents 2 and 3 is decided by the Court, first respondent will get the share. The first respondent has valid title or not can be decided only when the share of the petitioners, respondents 2 and 3 are decided in the suit. The said reason is not valid reason. On the other hand, the learned Appellate Judge considering the purchase by the first respondent and registered sale deed in favour of the first respondent, allowed the appeal properly appreciating the sale deed in favour of the first respondent and held that she is necessary and proper party to the suit. There is no infirmity in the judgment of the learned Appellate Judge dated 02.08.2014 made in C.M.A.Nos.11 & 12 of 2013, reversing the fair and decretal order dated 11.01.2013 made in I.A.Nos.840 and 839 of 2012 in O.S.No.420 of 2012.

9.In the circumstance, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.02.2018

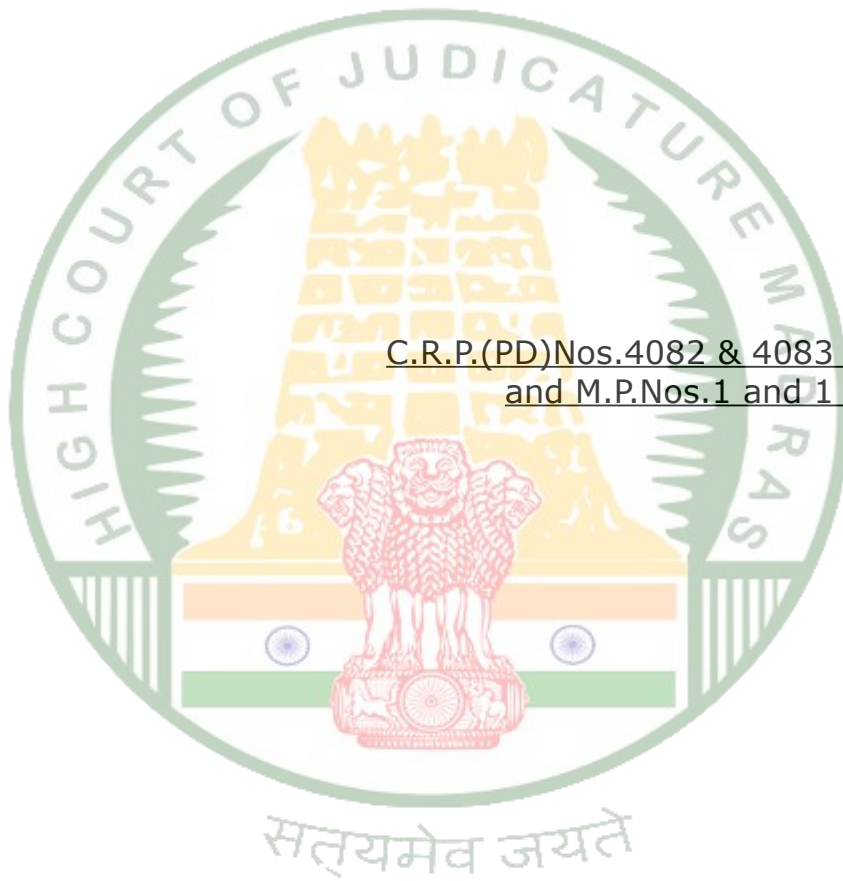
Index :: Yes/No
gsa

To

- 1.The First Additional District Judge,
Coimbatore.
- 2.The Principal Subordinate Judge,
Coimbatore.



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