

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1021 of 2015
and M.P.No.1 of 2015

Maruthai

..Petitioner

Vs.

Marimuthu Udaiyar

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.04.2014 made in I.A.No.279 of 2013 in O.S.No.135 of 2010 on the file of the Subordinate Court, Perambalur.

For Petitioner : Mr.G.Ilamurugu

For Respondent : Mr.K.Nagendra Prasad for
Mr.E.K.Kumaresan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.04.2014 made in I.A.No.279 of 2013 in O.S.No.135 of 2010 on the file of the Subordinate Court, Perambalur.

2. The petitioner is first defendant and respondent is plaintiff in O.S.No.135 of 2010 on the file of the Subordinate Court, Perambalur. The respondent filed the said suit for specific performance of agreement of sale dated 30.03.2009. The petitioner filed written statement on 18.04.2011 and is contesting the suit. The trial commenced and respondent examined three witnesses and after cross examination of those witnesses, closed his side. The petitioner filed proof affidavit. When the suit was posted for taking proof affidavit on file and for marking document, the petitioner filed present application in I.A.No.279 of 2013 under Order VI Rule 17 C.P.C. to amend the written statement to substitute the date of settlement deed executed by him in favour of his son/second defendant, in para-4 of the written statement as 20.11.2009 instead of 16.12.2010.

3. According to the petitioner, he gave xerox copy of the settlement deed and by typographical error, wrong date has been typed.

4. The respondent filed counter affidavit and contended that the petitioner has not given any reason for not filing the application

before commencement of trial. After commencement of trial, an amendment can be ordered only when the petitioner alleges and proves that in spite of due diligence, he could not file the application for amendment before commencement of trial. The petitioner in his proof affidavit also mentioned the date of settlement deed as 16.12.2010 and not as 20.11.2009. The learned counsel for the petitioner cross-examined the witnesses of the respondent with regard to the settlement deed mentioning the date as 16.12.2010.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the petitioner has not given any reason for not filing application before commencement of trial and has not alleged and proved that in spite of due diligence, he could not have filed the application earlier and further, the petitioner has not filed the settlement deed, dismissed the application.

6. Against the said order of dismissal dated 03.04.2014 made in I.A.No.279 of 2013 in O.S.No.135 of 2010, the present Civil Revision Petition is filed by the petitioner/first defendant.

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

8. The learned counsel for the petitioner contended that the date of settlement deed due to the typographical error has been wrongly typed as 16.12.2010 instead of 20.11.2009. From the materials available on record, it is seen that the petitioner has not stated as to why he did not file the application before commencement of trial and he has also not stated as to when he found the typographical error. On the other hand, the learned counsel for the petitioner cross-examined the witnesses of the respondent with regard to the settlement deed relied on by the counsel to substantiate his case. The respondent has filed suit for specific performance of the agreement of sale dated 30.03.2009. In the suit for specific performance, the issue to be decided is whether the agreement of sale is valid or not and whether the plaintiff is ready and willing to perform his part of contract and whether the plaintiff is entitled to equitable relief of specific performance. Further, the agreement of sale is dated 30.03.2009. Now the petitioner is seeking to amend the date of settlement deed as 20.11.2009 instead of 16.12.2010. The settlement deed, even if it

is dated 20.11.2009, is subsequent to the agreement of sale mentioned in the plaint.

9. The learned Judge considering the above facts along with the decision relied on by the learned counsel for the respondent, dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 03.04.2014.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.01.2018

Index:Yes/No

kj

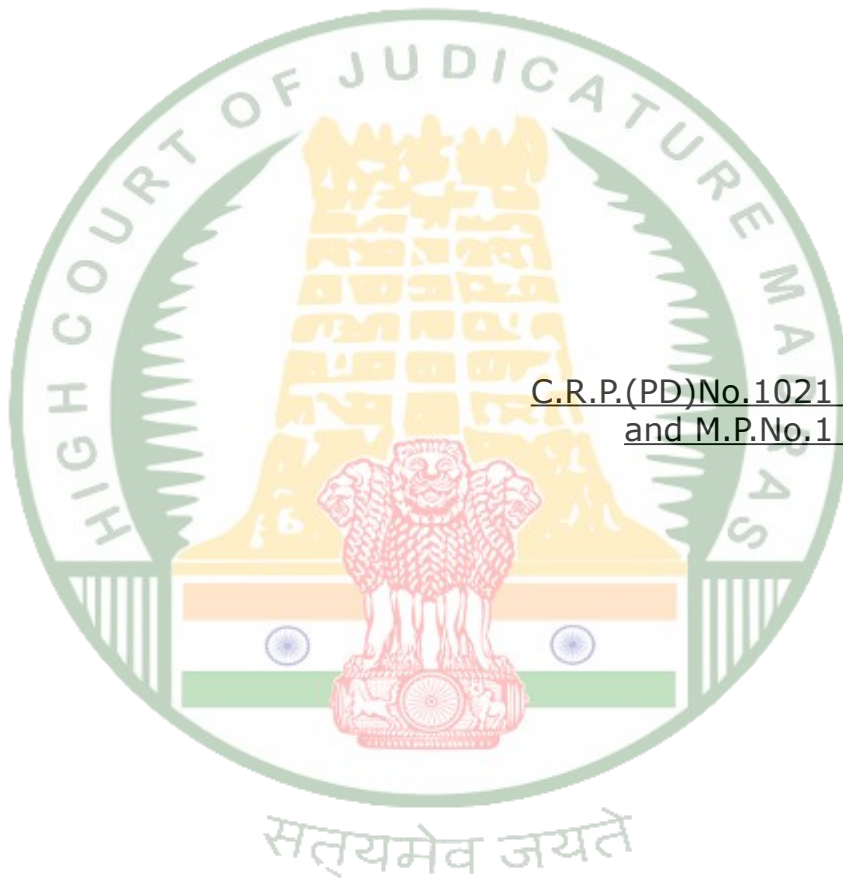
To

The learned Subordinate Judge
Perambalur.

WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(PD)No.1021 of 2015
and M.P.No.1 of 2015

WEB COPY 29.01.2018