

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4688 of 2011
& M.P.Nos.1 of 2011 and 1 of 2012

Prithiviraj

.. Petitioner

Vs.

1.R.Venkatesan

2.Benjamin Keniz

3.Sunil Benjamin

4.Minor Keertana

(Minor represented by his
guardian-father Benjamin Keniz)

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the judgment and decree dated
03.11.2011 made in O.S.No.590 of 2011 on the file of the I
Additional District Court, Coimbatore.

For Petitioner

: Mr.G.Karthikeyan

For R1

: Mr.G.Rajan

For R2 & R3

: No appearance

R4

: Minor represented by R2

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ORDER

The Civil Revision Petition is filed against the judgment and decree dated 03.11.2011 made in O.S.No.590 of 2011 on the file of the I Additional District Court, Coimbatore.

2. The petitioner is fourth defendant, first respondent is plaintiff and respondents 2 to 4 are the defendants 1 to 3 in O.S.No.590 of 2011 on the file of the I Additional District Court, Coimbatore. The first respondent filed said suit against the respondents 2 to 4 and petitioner for specific performance of agreement of sale dated 21.05.2011. The respondents 2 to 4 are the owners of the property. They appointed petitioner as their power agent by registered deed of power of attorney dated 23.11.2010 to deal with the suit property including power of alienation. The petitioner as an agent of the respondents 2 to 4 entered into an agreement of sale dated 21.05.2011 with the first respondent to sell the suit property for a total sale consideration of Rs.27,25,000/-. First respondent paid a sum of Rs.10,10,000/- as an advance to the petitioner. According to the first respondent, petitioner was postponing execution of the sale deed and hence, first respondent filed said suit for specific performance of agreement of sale.

3. According to the petitioner, the suit was posted on 28.10.2011, the matter was referred to Mediation and posted before the Mediation on 29.10.2011. On that date, all the parties and their advocates appeared before the Mediation and the second respondent accepted his liability to the petitioner and as such the matter was adjourned to 31.10.2011. On that date, first respondent submitted that the second respondent is not willing to settle the matter and suit was directed to be posted before the Court on 02.11.2011. On that date, the parties filed their vakalat and suit was adjourned to 03.11.2011. On 03.11.2011, suit was adjourned to 28.11.2011 for filing written statement by petitioner and respondents 2 to 4. On 04.11.2011, when the counsel for the petitioner verified the Court diary, it was found that the suit was decreed as per the memo filed by the respondents 2 to 4 submitting to decree.

4. The petitioner has come out with the present Civil Revision Petition challenging the said judgment and decree dated 03.11.2011 made in O.S.No.590 of 2011 on the ground that no notice was given to the petitioner to putforth his case. The learned counsel for the petitioner contended that the petitioner is a power agent of the

respondents 2 to 4 and he has only entered into agreement of sale with the first respondent/plaintiff on behalf of the respondents 2 to 4. Even if the second respondent has directly agreed to execute the sale deed, the petitioner must be given an opportunity to put forth his case.

5. Per contra, the learned counsel for the first respondent submitted that the petitioner is only a power agent of the respondents 2 to 4 and the respondents have entered into a compromise and as per the said compromise, the respondents 2 to 4 have agreed to execute the sale deed in favour of the first respondent and based on the said memo of compromise, the suit was decreed. The first respondent has paid entire sale consideration, when the owners have directly agreed to execute the sale deed and as per the agreement of sale, the petitioner has no locus-standi to be heard in the matter.

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6. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Though respondents 2 and 3 entered appearance through counsel, today there is no representation on behalf of them.

7. It is an admitted fact that the respondents 2 to 4 are owners of the suit property and they appointed the petitioner as their power agent to deal with the suit property including power of sale. Based on the deed of power of attorney dated 23.11.2010, the petitioner has entered into an agreement of sale on behalf of the respondents 2 to 4 with the first respondent. It is not the case of the respondents that the respondents 2 to 4 revoked the deed of power of attorney appointing petitioner as their agent. The petitioner is fourth defendant in the suit. In view of the same, petitioner is entitled to be heard before the memo of compromise is recorded. However, there is nothing on record to show that the first respondent has given up the petitioner in the suit. In the memo of compromise, in clause (3), the respondents 2 to 4 have stated that they will be initiating separate legal proceedings against the petitioner for recovery of Rs.10,10,000/- received by him as advance. In view of such stand taken by the respondents 2 to 4 in the memo of compromise, the learned Judge ought to have heard the petitioner before recording the memo of compromise and decreed the suit based on the memo of compromise. In view of the above facts, the learned Judge has committed an irregularity without hearing the petitioner.

8. For the above reason, the Civil Revision Petition is allowed. The judgment and decree dated 03.11.2011 made in O.S.No.590 of 2011 is set aside and the suit is restored to file. The learned Judge is directed to hear the petitioner and respondents and decide the issue on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.01.2018

Index : Yes/No
kj

To

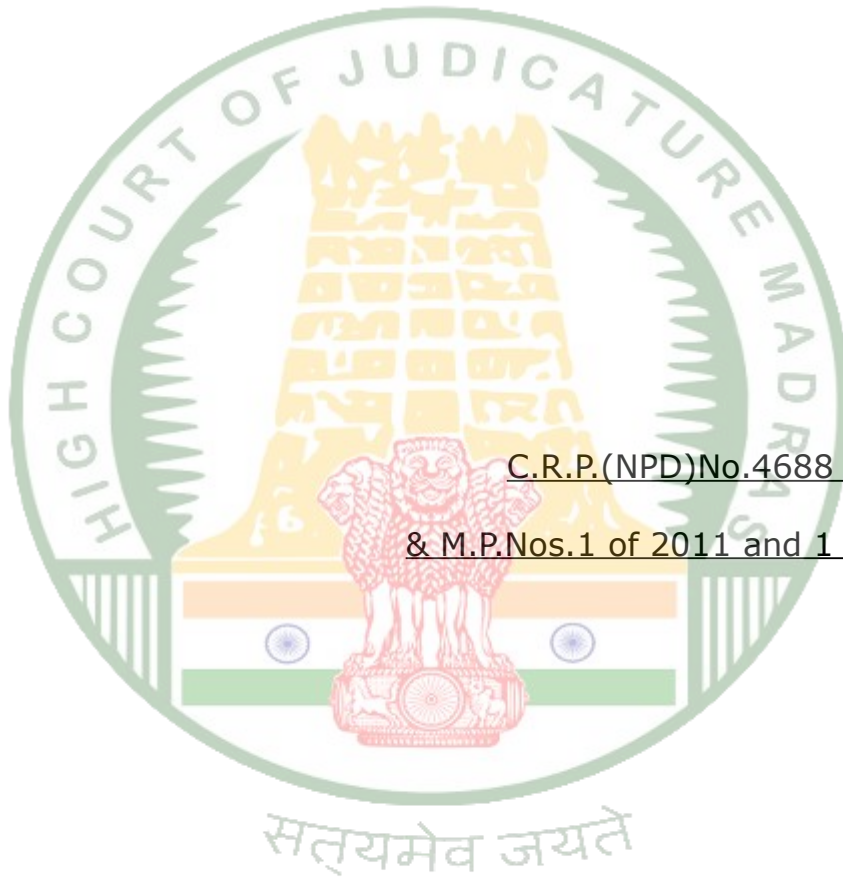
I Additional District Judge, Coimbatore.



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V.M.VELUMANI, J.

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