

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) No.4538 of 2015
and M.P.No.1 of 2015**

Colonel K. Malaiappan (Retd.) ... Petitioner

Vs

1.V.Damodaran
2.S.Duraisamy ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 04.11.2015 made in I.A.No.61 of 2012 in o.S.No.7848 of 2010 on the file of the XVI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Arumugam

For Respondents : Mr.R.Ganesan for R1
Mr.V.Hari Babu for R2

ORDER

This Civil Revision Petition is filed against the order dated 04.11.2015 made in I.A.No.61 of 2012 in O.S.No.7848 of 2010 on

the file of the XVI Additional Judge, City Civil Court, Chennai.

2. The petitioner is the plaintiff, first respondent is the second defendant, second respondent is the first defendant in O.S.No.7848 of 2010 on the file of the XVI Asst. Judge, City Civil Court, Chennai. The petitioner filed the said suit for specific performance of agreement of sale and for declaration that the sale deed dated 22.10.2007 bearing Doc.No.3731 of 2007 executed by the second respondent in favour of the first respondent as null and void. The first respondent filed written statement on 20.11.2010 and the second respondent filed written statement on 16.08.2011 and are contesting the suit. Trial commenced. Parties have let in evidence and closed their side. The suit was posted for arguments on 15.03.2012. The first respondent filed I.A.No.61 of 2012 to re-open the evidence of the first respondent for further evidence on the side of the first respondent.

2(a) According to the first respondent, he made vigorous and sustained enquiries with the help of his relatives and friends during the period from 20.02.2012 to 10.03.2012 and came across very invaluable and irrefutable evidence from a nationalised bank and a Government of Tamil Nadu entity to expose false case of the petitioner. It will show that the petitioner is only a tenant and not

purchaser of the suit property.

2(b) The petitioner filed counter affidavit and contended that the present application is filed only to fill in the lacuna. The first respondent has not given the details of witnesses and documents sought to be filed. The first respondent has not given any explanation for not taking steps till February 2006 to get invaluable and irrefutable document . The first respondent has filed twenty-one (21) documents alongwith written statement and filed thirty-nine (39) documents subsequently. The first respondent ought to have taken diligent steps to protect his interest at the earliest point of time or atleast when sufficient opportunities were given.

3. The learned Judge, considering the averments in the affidavit and counter affidavit and that the first respondent has filed two subpoena applications to summon the officials to examine them as witnesses in the suit, allowed the application in the interest of justice, in order to give an opportunity to the first respondent to prove his case.

4. Against the said order dated 04.11.2015 made in I.A.No.61 of 2012 in O.S.No.7848 of 2010, the present Civil Revision Petition has been filed by the petitioner.

5. The learned counsel for the petitioner contended that the learned Judge has not considered the objection of the petitioner and has not given any reason for rejecting the said objection taken in the counter. From the attitude of the first respondent, it is clear that the first respondent has come up with the present application to fill in the lacuna.

6. Per contra, the learned counsel appearing for the first respondent contended that the first respondent has filed twenty one documents alongwith the written statement and subsequently, by filing application for obtaining leave to produce thirty seven documents. First respondent, by diligent search and with the help of friends and relatives came across certain documents which are necessary to disprove the claim of the petitioner that he is an agreement holder to purchase the property from the second respondent and to prove that the petitioner is only a tenant. The learned counsel for first respondent also made submissions on merits of the suit.

7. Heard the learned counsel for the petitioner as well as learned counsel appearing for respondents and perused the

materials available on record.

8. The claim of the petitioner is that as per oral agreement with second respondent, the petitioner has agreed to purchase the suit property and paid substantial amount as advance and paid monthly instalments to Tamil Nadu Housing Board on behalf of the second respondent. He is in possession of the suit property as agreement holder and not as a tenant. The respondents denied all the averments of the petitioner and according to the respondents, there is no agreement of sale and the petitioner is only a tenant. The first respondent purchased the property from the second respondent. As the petitioner refused to attorn the tenancy in favour of the first respondent and failed to pay the rent and Rent Control proceedings had been initiated against the petitioner. The first respondent has filed twenty one documents alongwith the written statement and on 19.01.2012 filed application for permission to file further documents. The said application was allowed and the first respondent filed thirty seven documents and trial was concluded as both the parties have let in evidence and closed their side.

9. One day before when the suit was posted for arguments, the first respondent has come out with the present application for

re-opening the evidence of the second defendant, i.e. first respondent herein for further evidence. According to the first respondent, by vigorous and sustained enquiries from 20.02.2012 to 10.03.2012, the first respondent came across with certain documents which are necessary to disprove the claim of the petitioner. The first respondent has not given details of the documents or witnesses to be examined. The objection of the petitioner is that the application is a belated one and it is filed only to fill in the lacuna and the first respondent has not given any reason for not taking any steps prior to 20.02.2012. The learned Judge, in the impugned order extracted the averments of the first respondent and petitioner but has not considered the objection of the petitioner. The learned Judge also failed to consider that the first respondent has not given any reason for taking steps earlier to 20.02.2012 and making enquiries only from 20.02.2012 to 10.03.2012.

10. As far as two applications filed by the first respondent to issue summons to the witnesses are concerned, the present applications were allowed on 15.03.2012 without hearing the petitioner. This Court, by order dated 20.08.2015 in CRP (PD) No.2588 of 2012 filed by the petitioner to set aside the order dated

15.03.2012 made in I.A.No.61 of 2012, remanded the matter to the Trial Court for fresh consideration on merits. In view of the order dated 15.03.2012 made in the present application was set aside by this Court, two applications filed by the petitioner based on the earlier order cannot be taken into consideration for allowing the present application.

11. The contention of the learned counsel for the petitioner that present application is only to fill in the lacuna and first respondent has not given any valid reason for delay in filing the application or failed to furnish the details of documents and witnesses has considerable force. The learned Judge failed to consider these facts and committed an irregularity in allowing the application on the ground that the first respondent is the owner of the property and he must be given an opportunity to prove the case. The learned Judge has also failed to consider that the first respondent has filed twenty one documents alongwith written statement and thirty seven documents subsequently by filing application and the first respondent has not given any reason for not filing these documents earlier. For the above reasons, the impugned order of the learned Judge dated 04.11.2015 made in I.A.No.61 of 2012 in O.S.No.7848 of 2010 is liable to be set aside

and it is hereby set aside.

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

26.03.2018

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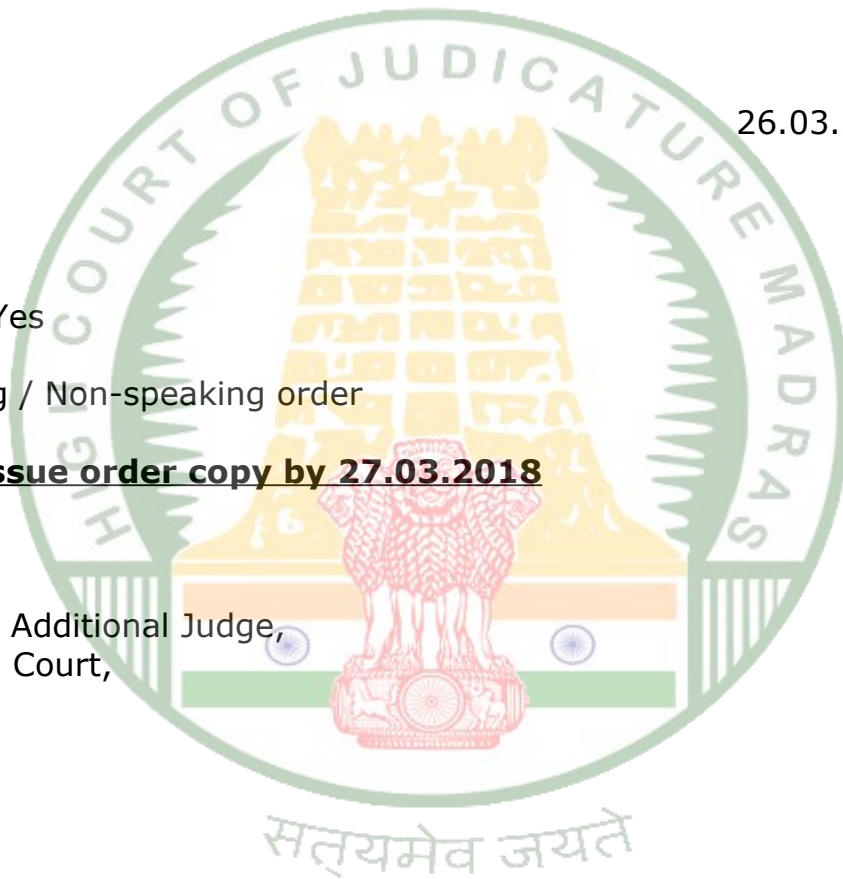
Index : Yes

Speaking / Non-speaking order

Note: Issue order copy by 27.03.2018

To

The XVI Additional Judge,
City Civil Court,
Chennai.



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V.M.VELUMANI, J.

rgr



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