

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.964 of 2014
and M.P.No.1 of 2014

Sajanraj

..Petitioner

Vs.

P.Narasimman

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.12.2013 made in I.A.No.47 of 2013 in O.S.No.13 of 2012 on the file of the II Additional District Court, Vellore at Ranipet.

For Petitioner : Mr.A.Gowthaman

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.12.2013 made in I.A.No.47 of 2013 in O.S.No.13 of

2012 on the file of the II Additional District Court, Vellore at Ranipet.

2. The petitioner is plaintiff and respondent is defendant in O.S.No.13 of 2012 on the file of the II Additional District Court, Vellore at Ranipet. The petitioner filed the said suit for specific performance of agreement of sale dated 20.07.2007. The respondent filed written statement on 12.05.2011 and is contesting the suit. The trial commenced and respondent filed I.A.No.47 of 2013 under Order VIII Rule 3(a)(1) and Section 151 of C.P.C., to condone the delay and receive the additional document filed by the respondent.

3. According to the respondent, he has sold the suit property by deed of sale dated 10.01.2008 to one Akbar Sheriff, S/o. Yahoob Sheriff.

4. The petitioner filed counter affidavit and opposed the said application and submitted that the document filed by the respondent is only a xerox copy of the sale deed. The said document is false and fabricated one. It is only a binami transaction and sham and

nominal. The respondent has not obtained certified copy of the sale deed and not mentioned about the said sale deed in the written statement and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application on the ground that relevancy of the document can be decided only after trial, petitioner can express his view on the said document at the time of trial and to avoid multiplicity of proceedings.

6. Against the said order dated 17.12.2013 made in I.A.No.47 of 2013 in O.S.No.13 of 2012, the petitioner/plaintiff filed the present Civil Revision Petition.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name has been printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8. From the materials available on record, it is seen that the respondent has sought for permission to mark xerox copy of the sale deed dated 10.01.2008. The respondent has not stated as to why he did not produce original document or as to why he did not summon the purchaser to produce the original document. The respondent has not complied with the provisions of the Evidence Act for marking of the xerox copy of the document, which is secondary evidence.

9. On perusal of the written statement filed by the respondent, it reveals that the respondent has not stated about the sale deed dated 10.01.2008 in the written statement. The learned Judge failed to consider the contention of the petitioner that xerox copy of the document cannot be marked. By failure on the learned Judge to consider whether the respondent has complied with the provisions of the Evidence Act for marking of the xerox copy of the document, amounts to irregularity and failure to exercise his power properly. The reason given by the learned Judge to avoid multiplicity of proceedings, is not a valid reason. Therefore, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, the Civil Revision Petition is allowed. As the suit is of the year 2012, the learned Judge is directed to dispose of the suit in O.S.No.13 of 2012 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

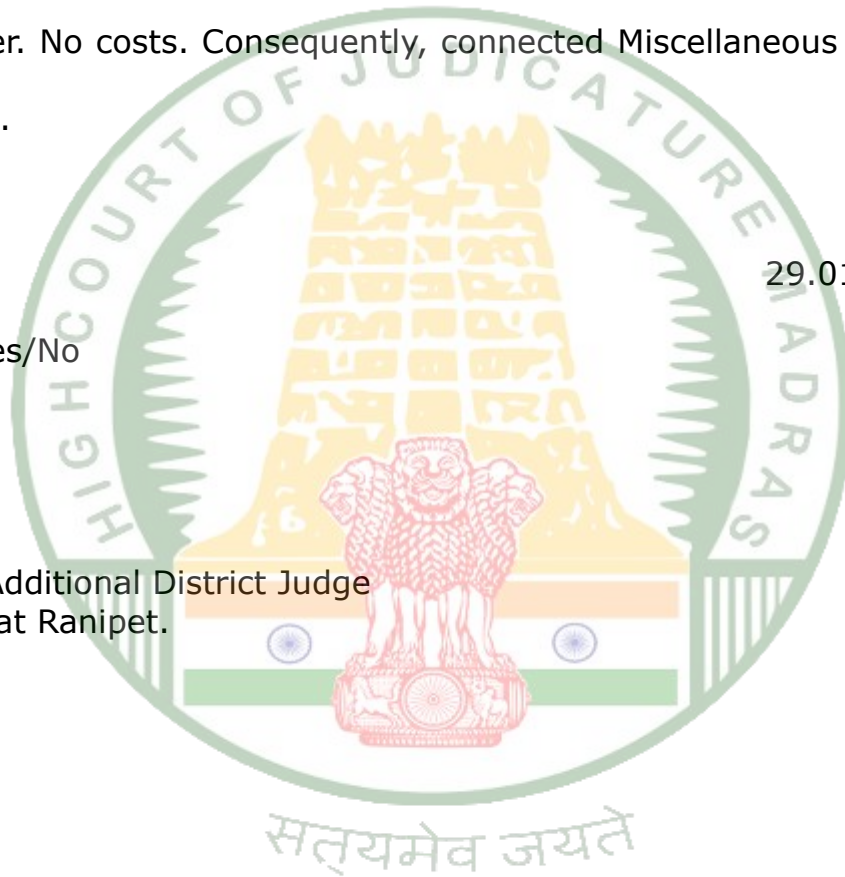
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Index:Yes/No

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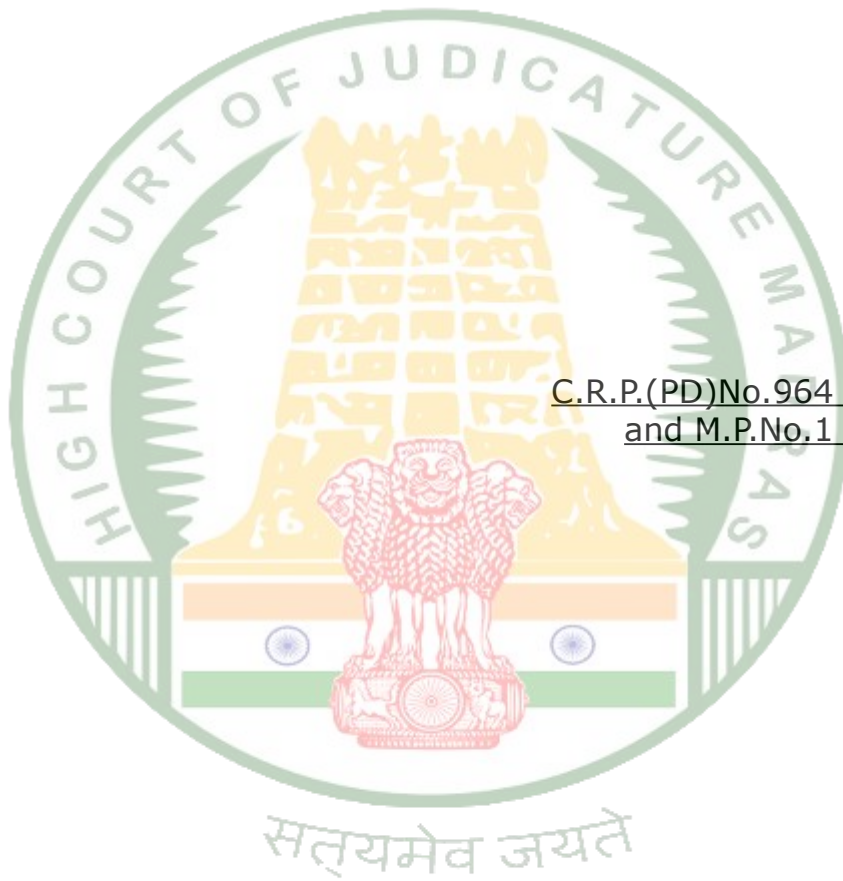
The II Additional District Judge
Vellore at Ranipet.



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V.M.VELUMANI,J.

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