

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4730 of 2015
& M.P.No.1 of 2015

1.G.N.Chandramohan
2.G.N.Jayaprakash
3.Murali
4.Krishnamurthy

.. Petitioners

Vs.

1.Indirani
2.Vijayalakshmi
3.G.N.Suguvanthi
4.G.N.Geetha
5.G.N.Kalaimani

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 14.07.2015 in R.E.A.No.22 of 2013 in R.E.P.No.117 of 2008 in O.S.No.1276 of 2004 on the file of the I Additional District Munsif Court, Salem.

For Petitioners : M/s.P.T.Ramadevi

For R1 & R5 : No appearance

For R2 & R4 : Not ready in notice

For R3 : M/s.R.Meenal

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 14.07.2015 in R.E.A.No.22 of 2013 in R.E.P.No.117 of 2008 in O.S.No.1276 of 2004 on the file of the I Additional District Munsif Court, Salem.

2.The petitioners are the defendants 1, 2, 7 and 8, first respondent is the plaintiff and respondents 2 to 5 are the defendants 3 to 6 in O.S.No.1276 of 2004 on the file of the I Additional District Munsif Court, Salem. The first respondent filed the said suit against the petitioners and respondents 2 to 5 for partition and mandatory injunction. The petitioners were set exparte for their non-appearance and for not filing written statement. The respondents 2 to 5 appeared and filed written statement, accepting the claim of the first respondent/plaintiff and paid Court fee for their share. A preliminary decree was passed. The petitioners filed I.A.No.648 of 2006 to set aside the exparte preliminary decree. The said application was allowed on payment of cost. The petitioners did not pay the cost and application in I.A.No.648 of 2006 was dismissed. The petitioners filed appeal against the said dismissal and appeal was returned for certain corrections to be made in the

preliminary decree. The petitioners filed I.A.No.1230 of 2008 for amendment and the same is pending.

3. Mean while, an Advocate Commissioner was appointed in the final decree application. The Advocate Commissioner filed his report stating that property is indivisible. The Court ordered public auction among the sharers and the 3rd respondent/4th defendant was the highest bidder and she purchased the property. She filed E.P.No.117 of 2008 under Order XXI Rule 11 of C.P.C for delivery of possession. At that time, the petitioners filed application under Section 47 of C.P.C. The said application was returned on various dates. The petitioners represented the same on various dates. Finally, the petitioners represented the same on 18.06.2013 with application R.E.A.No.22 of 2013 under Section 151 of C.P.C to condone the delay of 247 days in representation of the application filed under Section 47 of C.P.C. According to the petitioners, the returned application got mixed up with other bundle in the office of their counsel and therefore, it could not be represented in time.

4. The 3rd respondent/4th defendant filed counter and the same was adopted by the first respondent/plaintiff. In the counter, she made various averments on merits.

5.The learned Judge considering the averments in the affidavit, counter affidavit and materials on record and the dates on which the application is filed under Section 47 of C.P.C, the application returned on various dates and on various dates the petitioners represented the same, dismissed the application on the ground that petitioners have not approached the Court with clean hands.

6.Against the said order of dismissal dated 14.07.2015 in R.E.A.No.22 of 2013 in R.E.P.No.117 of 2008 in O.S.No.1276, the present Civil Revision Petition is filed by the petitioners.

7.Heard the learned counsel for the petitioners as well as the 3rd respondent and perused the materials available on record. Though notice was served on the respondents 1 and 5 and their names are printed in the cause list, there is no representation either in person or through counsel.

8.From the application filed by the petitioners under Section 47 of C.P.C, it is seen that the petitioners have made various allegations against 3rd respondent/4th defendant, who according to

them misused her position as Court staff and obtained the final decree and purchased the property. According to the petitioners, in view of the fraud played by 3rd respondent/4th defendant, E.P to be dismissed. In view of the serious allegations made against the Court staff, the petitioners cannot be shut down from substantiating their case on merits. The petitioners must be given an opportunity to establish their case by acceptable evidence. The petitioners have represented the applications on various dates and the petitioners have submitted that delay has occurred in the office of their counsel. The learned Judge has not considered the reason given by the petitioners. On the other hand, dismissed the same on the ground that petitioners have not mentioned the various returns by the Court and their representation and has not approached the Court with clean hands. The reason given by the learned Judge for dismissing the application is not valid reason and the impugned order of the learned Judge is liable to be set aside, in the interest of justice and in order to give an opportunity to put forth their case on merits.

9.The petitioners have represented the application only after considerable delay. In view of the same, cost has to be imposed on the petitioners. In the result, the impugned order of the learned

Judge dated 14.07.2015 in R.E.A.No.22 of 2013 in R.E.P.No.117 of 2008 in O.S.No.1276 of 2004 is set aside on condition that the petitioner pays a sum of Rs.2000/- to Sri Madha Trust, Mohandevi Hirachand Nahar, Rajasthan Dharmasala, Old Cancer Institute, East Canal Bank Road, Gandhi Nagar, Adyar, Chennai 600 020, within a period of three (3) weeks from the date of receipt of a copy of this order, failing which the order of the learned Judge shall stand confirmed.

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

02.02.2018

Index :: Yes/No
Speaking Order/Non Speaking Order
gsa

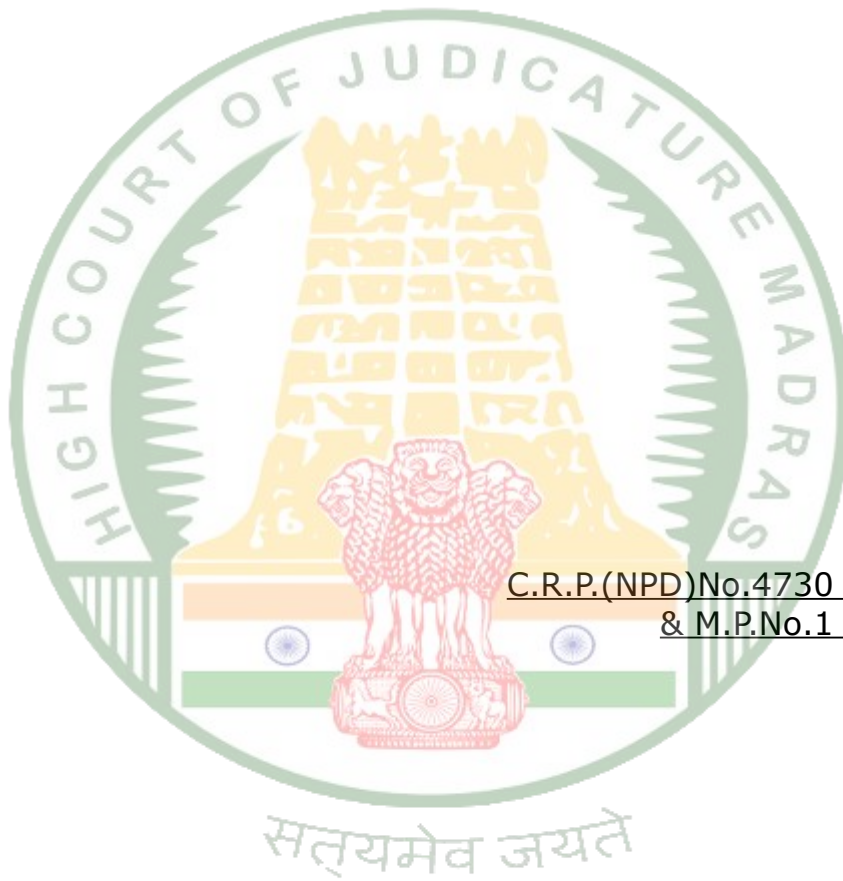
To

The Judge,
I Additional District Munsif Court,
Salem.

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V.M.VELUMANI, J.

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