

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(NPD).No.689 of 2018
and
CMP.No.3597 of 2018

S.Jayalakshmi

.. Petitioner

Vs

Arulmigu Vengeeswarar Alagar Perumal and
Nagathamman Devasthanam

Represented by its Hereditary Trustee
Having Office at Temple Premises

Vadapalani
Chennai 600 026

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the
Constitution of India against the order of the learned IX Assistant City
Civil Court, Chennai dated 31.01.2018 passed in EA.No.1535 of 2014 in
EP.No.787 of 2005 in OS.No.137 of 1995.

For Petitioner

: Mr.K.V.Babu

ORDER

The Civil Revision Petition is taken up for final disposal at the admission stage itself.

2. According to the revision petitioner, the respondent herein has filed a suit in OS.No.137 of 1995 for ejectment and obtained ex-parte decree in the aforesaid suit. Thereafter, the respondent initiated execution proceedings in EP.No.787 of 2005 on the file of IX Assistant City Civil Court, Chennai. The revision petitioner has filed an application in EA.No.1535 of 2014 before the XI Assistant City Civil Court, Chennai seeking to declare that the judgment and decree passed in OS.No.137 of 1995 is null and void by stating that the same was obtained by the respondent by committing fraud. In the aforesaid application, the revision petitioner has contended that the suit property is classified as 'Grama Natham' and the same do not belongs to respondent. The executing court dismissed the said application and ordered delivery of suit property by 28.02.2018. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the revision petitioner would submit that the revision petitioner has filed the instant application to treat the uncontested exparte decree passed in OS.No.137 of 1995 as null and void, pending Award No.8 of 2013. Pending the same, the revision petitioner has filed a suit in CS.No.77 of 2016 before this Court with the prayer to declare the judgment and decree passed in the above suit as null and void and to declare that the revision petitioner is the absolute owner of the property and for permanent injunction.

4. The learned counsel for the revision petitioner has stated that the revision petitioner has disclosed the fact in Paragraph 6 of the plaint by stating the pendency of EA.No.1535 of 2014. Hence, in the execution application, the said fact has also been disclosed before the Court.

5. The paragraph 6 of the plaint in CS.No.77 of 2016 is extracted as follows.

“6. The plaintiff submits that as provided in CPC, under section 96, against the

decree passed in OS.No.137 of 1995, the plaintiff filed a First appeal before the Principal Judge, City Civil Court in AS.Sr.No.48064/2005 along with the petition to condone the delay of 2473 days in CMP.No.2232 of 2005. Pending appeal, the plaintiff defended the execution petition simultaneously as well as prosecuted the order 9 Rule 13 provisions to set aside the decree. Insofar as the execution proceedings the plaintiff filed EA.No.5114 of 2005 under Section 47 of CPC contending the inter-alia that the decree in OS.No.137 of 1995 was obtained by fraud. The IX Assistant Judge, City Civil Court, Chennai as executing court, dismissed the EA.no.5114 of 2005 on 17.09.2013 and against the said judgment and decree the plaintiff filed Civil Revision Petition No.1034 of 2014. On the dismissal of the revision, in CRP.No.1034 of 2014, the appeal in AS.Sr.No.48064 of 2005 was also dismissed by the same order. It is not out of place to mention that even as on today, the EP.No.787 of 2005 is pending

on the file of IX Assistant City Civi Court, Chennai.”

6. The learned counsel for the revision petitioner admitted that the execution application in EA.No.1535 of 2014 has not been disclosed in the pending civil suit, for the prayer of declaring the judgment and decree passed in OS.No.137 of 1995 as null and void and the same was by fraud played by the respondent. Hence, it is clear that the revision petitioner filed civil suit in CS.No.77 of 2016, without disclosing correct fact, and now preferred the Civil Revision Petition.

7. In the decision of *S.P.Chengalvaraya Naidu (Dead) .. Vs Jagannath By L.Rs. And others...* reported in AIR 1994 SC 853, the Hon'ble Supreme Court has held as follows.

“8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was

working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side

then he would be guilty of playing fraud on the court as well as the opposite party”.

8. The respondent has filed EP.No.787 of 2005. Against the EP, the revision petitioner filed EA.No.5114 of 2005, which was dismissed. Against the said order, the revision petitioner filed a Civil Revision Petition in CRP.No.1034 of 2014, which was dismissed. Further, appeal has been filed in AS.Sr.No.48064 of 2005 and the same was also dismissed. Therefore, from the aforesaid fact, the revision petitioner has filed application after application before the executing court and also filed fresh suit, without disclosing the fact. By considering at any angle, the revision petitioner approached this Court with unclean hands and abuse of process. Therefore, there is no warrant to interfere with the order passed by the court below. There is no error or illegality in the order passed by the court below. The Civil Revision Petition is liable to be dismissed and this Court has to impose heavy cost on the revision petitioner.

9. The Civil Revision Petition is dismissed with cost of Rs.5,000/- (Rupees Five Thousand only) payable by the revision petitioner

to the Tamil Nadu Mediation and Conciliation Centre, High Court of Madras, Chennai within a period of four weeks from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petition is closed. No costs.

26.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

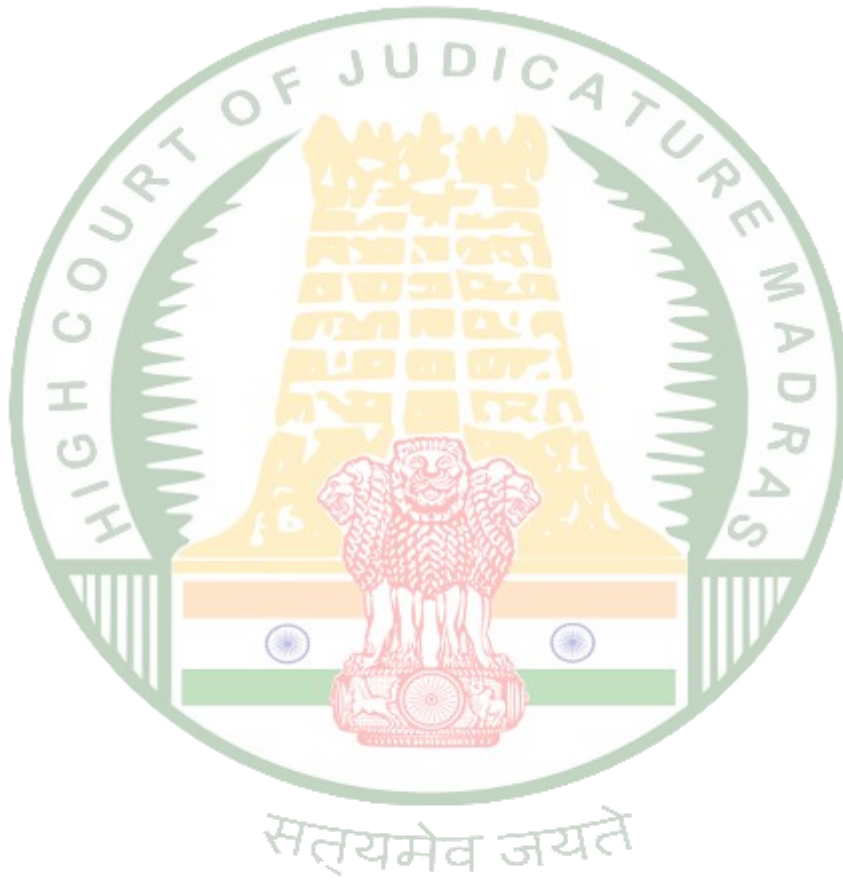
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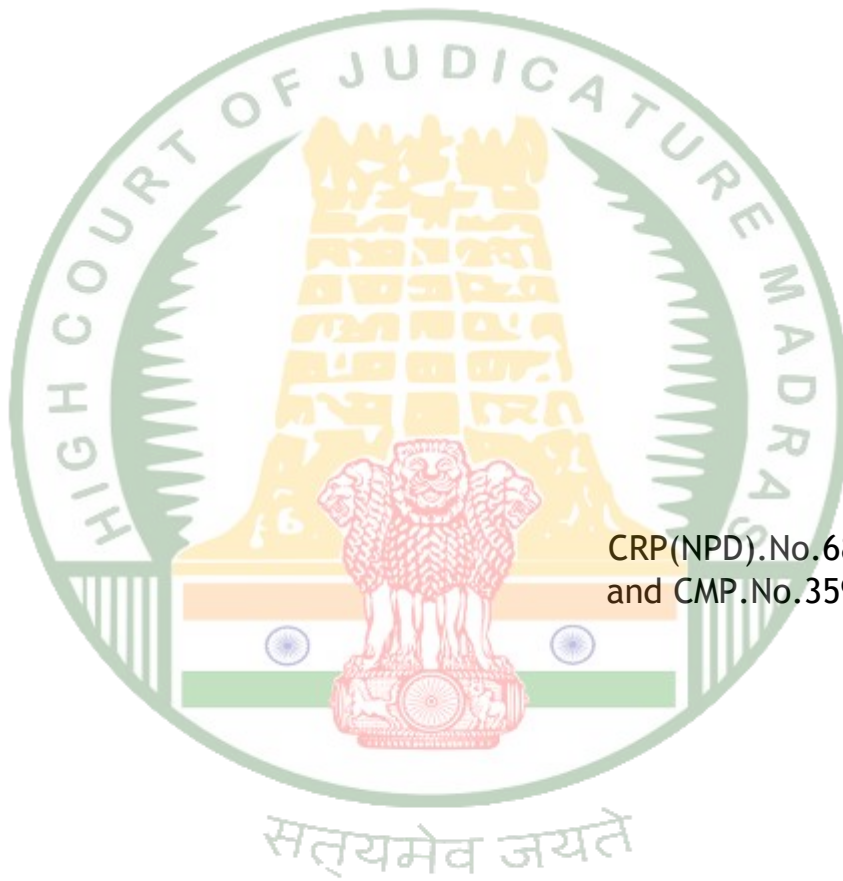
The learned IX Assistant City Civil Court,
Chennai



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D. KRISHNAKUMAR J.,

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