

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.989 of 2015
& M.P.No.1 of 2015

K.S.Kuppusamy .. Petitioner

Vs.

C.Thangamuthu .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.12.2014, made in I.A.No.612 of 2014 in O.S.No.248 of 2012 on the file of the Principal District Judge, Erode.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Mr.V.S.Kesavan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 10.12.2014, made in I.A.No.612 of 2014 in O.S.No.248 of 2012 on the file of the Principal District Judge, Erode.

2.The petitioner is 7th defendant and respondent is the plaintiff in O.S.No.248 of 2012 on the file of the Principal District Judge, Erode. The respondent filed the said suit against the petitioner and

6 others for declaration, permanent injunction restraining the petitioner and 6th defendant from alienating or encumbering the suit property and for a partition and separate possession. The petitioner filed written statement on 02.04.2013 and additional written statement on 25.08.2014 and is contesting the suit. The respondent let in oral evidence and the counsel for the defendants have cross examined P.W.1. When the suit was posted for cross examination of P.W.1, the petitioner has come out with I.A.No.612 of 2014 for permission to file additional written statement on the ground that there was oral partition between the defendants 1 to 4 based on which the defendants 1 and 3 settled the property in favour of the 2nd defendant. The petitioner purchased the property by sale deed dated 27.02.2012 from the second defendant. These facts were not mentioned in the written statement already filed by him on 02.04.2013. For the above reason, the petitioner sought permission to file additional written statement.

3.The respondent filed counter affidavit and contended that petitioner has taken number of adjournments to cross examine P.W.1 and has come out with the present application only to drag on the proceedings. These facts were available when the petitioner filed written statement earlier and has not given any reason for not

mentioning the same in the written statement and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and also taking note of the fact that the respondent himself has mentioned about the sale deed dated 27.02.2012 in favour of the petitioner by the second respondent in the plaint averments, dismissed the application as unnecessary.

5.Against the said order of dismissal dated 10.12.2014, made in I.A.No.612 of 2014 in O.S.No.248 of 2012, the present Civil Revision Petition is filed by the petitioner.

6.A copy of the plaint is filed in the typed set of papers. A perusal of the plaint shows that in paragraph 12 of the plaint, the respondent has mentioned the sale deed dated 27.02.2012 executed by the second defendant in favour of the petitioner. The respondent has also mentioned various other suits between the parties. The learned Judge has rightly took note of the averments in the plaint and the fact that the petitioner has not mentioned the date of sale deed in the written statement filed earlier and dismissed the application by giving cogent and valid reason. There is

no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 10.12.2014, made in I.A.No.612 of 2014 in O.S.No.248 of 2012.

7.The learned counsel for the respondent submitted that already trial commenced and only at the stage of the cross examination of P.W.1, the petitioner has come out with the present suit. In view of the same, the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order.

8.In the result, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.01.2018

Index :: Yes/No

Speaking Order/Non-Speaking Order

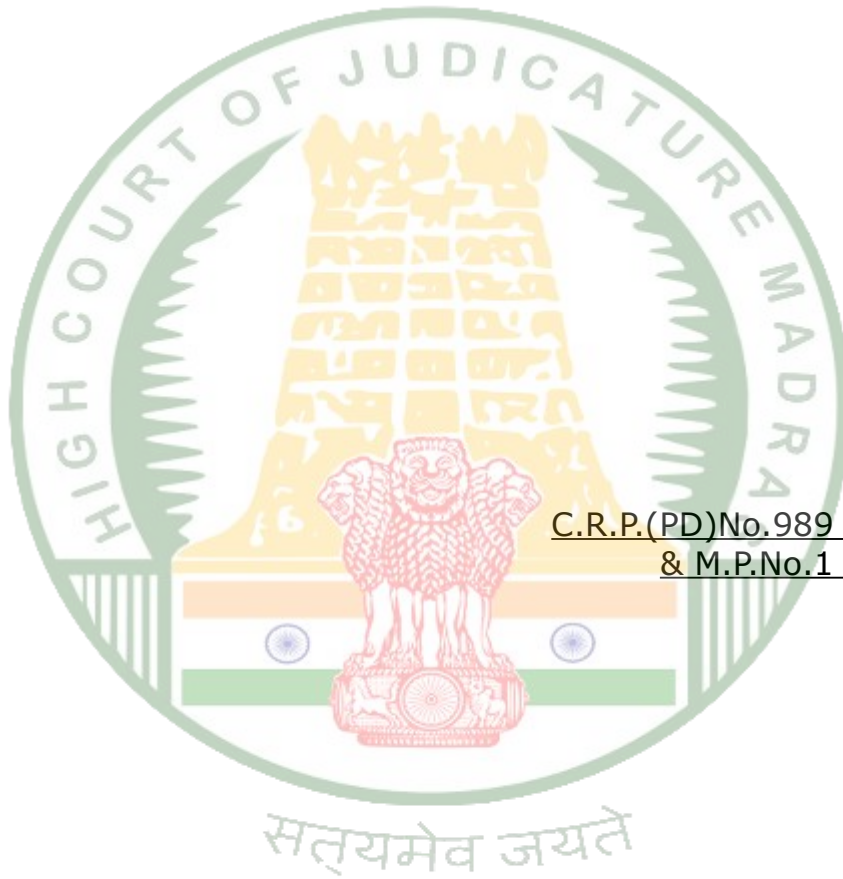
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To

The Principal District Judge,
Erode.

V.M.VELUMANI,J.

gsa



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