

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3253 and 3254 of 2013
and M.P.No.1 of 2013

1.Munirathnamma
2.A.R.Venkatachalapathy
3.A.R.Krishnamurthy

.. Petitioners in
both the C.R.Ps.

Vs.

1.S.Saraswathi
2.R.S.Munesh
3.R.S.Arun Kumar

.. Respondents in
both the C.R.Ps.

PRAYER in C.R.P.No.3253/2013: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 24.01.2013 made in I.A.No.594 of 2012 in I.A.No.191 of 2011 in O.S.No.153 of 2008 on the file of the Subordinate Court, Hosur.

PRAYER in C.R.P.No.3254/2013: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 24.01.2013 made in I.A.No.595 of 2012 in O.S.No.153 of 2008 on the file of the Subordinate Court, Hosur.

For Petitioners : Mr.B.K.Sreenivasan

For Respondents : Mr.L.Muralikrishnan

COMMON ORDER

C.R.P.No.3253/2013: This Civil Revision Petition is filed to set aside the fair and decretal order dated 24.01.2013 made in I.A.No.594 of 2012 in I.A.No.191 of 2011 in O.S.No.153 of 2008 on the file of the Subordinate Court, Hosur.

C.R.P.No.3254/2013: This Civil Revision Petition is filed to set aside the fair and decretal order dated 24.01.2013 made in I.A.No.595 of 2012 in O.S.No.153 of 2008 on the file of the Subordinate Court, Hosur.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are the defendants 1, 3 and 4 and respondents are the plaintiffs in O.S.No.153 of 2008 on the file of the Subordinate Court, Hosur. The respondents filed the said suit against the petitioners and one A.R.Srinivasa Murthy for partition and permanent injunction. The petitioners entered appearance and took time for filing written statement. At the intervention of the elders in the family, both the petitioners and respondents agreed to

compromise the matter and and the respondents agreed to withdraw the suit. Believing the said representation, the petitioners did not file written statement.

4.The petitioners filed I.A.No.594 of 2012 in I.A.No.191 of 2011 in O.S.No.153 of 2008 to condone the delay of 164 days in filing the application to set aside the exparte final decree passed on 15.02.2012 and I.A.No.595 of 2012 in O.S.No.153 of 2008 to condone the delay of 1114 days in filing the petition to set aside the exparte preliminary decree dated 06.07.2009. The contention of the petitioners is that contrary to the compromise before the elders, the respondents have obtained exparte preliminary decree and filed I.A.No.191 of 2011 for final decree. In the application I.A.No.191 of 2011, no notice was served on the petitioners. The Advocate Commissioner appointed by the Court also did not issue any notice on the petitioners. The petitioners came to know about the exparte decree and final decree only when they received notice in the Execution Petition and filed present two applications.

5.The respondents filed common counter affidavit and denied all the averments and contended that there was no compromise as alleged by the petitioners. The petitioners were aware of the

proceedings and the reason given by the petitioners is not a valid and sufficient reason and prayed for dismissal of both the applications.

6.The learned Judge considering the averments in the affidavit, counter affidavit and on perusal of the Court records, dismissed both the applications, holding that the petitioners failed to prove the alleged compromise before the elders of the family and held that petitioners were served with Court notice and in final decree proceedings, Advocate Commissioner appointed also served notice on the petitioners as well as the present counsel for the petitioners.

7.Against the said order of dismissal dated 24.01.2013 made in I.A.No.594 of 2012 in I.A.No.191 of 2011 in O.S.No.153 of 2008 and I.A.No.595 of 2012 in O.S.No.153 of 2008, the present two Civil Revision Petitions are filed by the petitioners.

8.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

9.From the materials available on record, it is seen that the petitioners have not approached the Court with clean hands. They have not substantiated their claim that there was a compromise between the petitioners and respondents before the elders of the family and the respondents agreed to withdraw the suit. The contention of the petitioners that no summons were served and no notice was served in the final decree application and Advocate Commissioner did not send any notice to them are proved to be false on verification of the Court records by the learned Judge. Notice in final decree application has been served on the petitioners. The Advocate Commissioner has also served notice on the present counsel for petitioners.

10.The learned Judge has considered these facts and dismissed both the applications 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 24.01.2013 made in I.A.No.594 of 2012 in I.A.No.191 of 2011 in O.S.No.153 of 2008 and I.A.No.595 of 2012 in O.S.No.153 of 2008.

11.In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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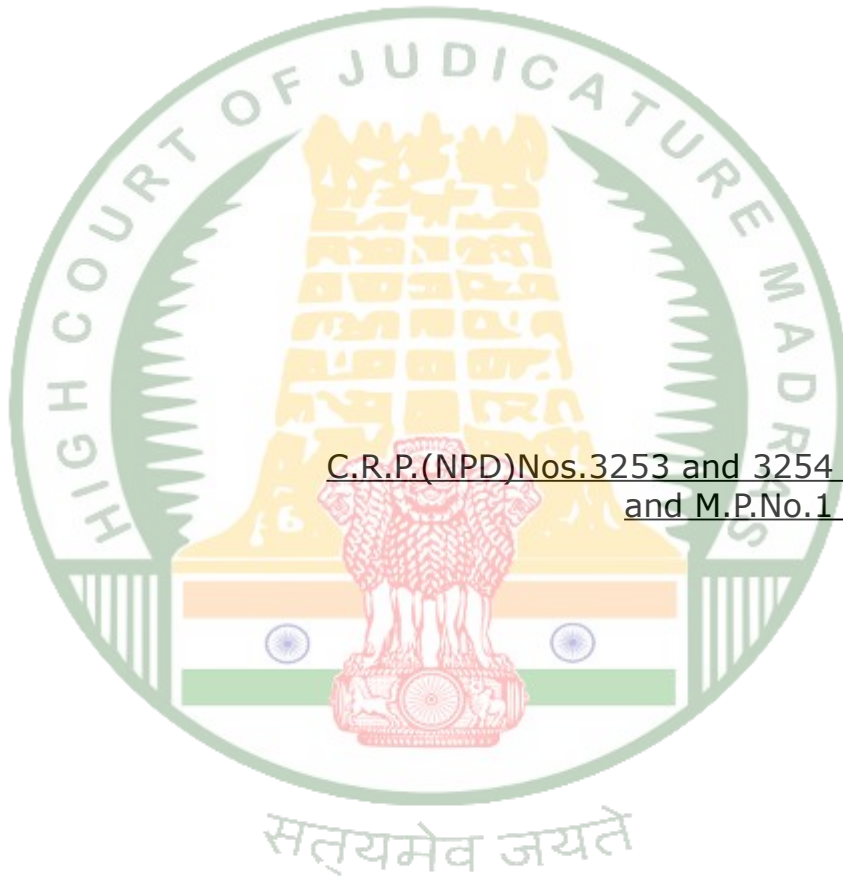
The Subordinate Judge,
Hosur.



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V.M.VELUMANI,J.

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