

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.445 of 2019

V. Elangovan ... Petitioner

-vs-

1. Narmadha Tillay

2. Thirunavalan

3. T.Elangovan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and decretal order dated 24.01.2017 passed in TOP No.50 of 2016 by the learned Principal District Judge, Puducherry and further re-transfer the O.S.No.51 of 2017 pending on the file of learned II Additional District Judge, Puducherry to II Additional District Munsif, Puducherry.

For Petitioner : Mr.R.Sreedhar

ORDER

The Civil Revision Petition is filed challenging the order of

the learned Principal District Judge, Puducherry in T.O.P.No.50 of 2016, in and by which, the learned Judge has ordered for transfer of the suit in O.S.No.1507 of 2012 pending on the file of the learned II Additional District Munsif, Puducherry, wherein O.S.No.01 of 2014 is pending. The learned Judge also fixed a date for appearance and had directed the case records in O.S.No.1507 of 2012 to be transferred to the file of the same II Additional District Judge, Puducherry.

2. The facts in brief are as follows:

The revision petitioner has filed a suit in O.S.No.1507 of 2012 in respect of the property bearing door No.11, Vaigai Street, Vasanth Nagar, Muthialpet, Pondicherry, seeking for permanent Injunction and restraining the defendants, their men, agents servants, etc., from disturbing the plaintiff's peaceful possession and enjoyment of the suit property. The defendant in the said suit is the plaintiff in the subsequent suit in O.S.No. 1 of 2014 viz., Narmadha Tillay and one Thirunavalan and Elangovan. Thirunavalan is the husband of the 1st defendant and the 3rd defendant, Elangovan is the brother of Thirunavalan. The plaintiff had claimed a right over the property on the basis of a Sale Deed

dated 07.08.2008 under which he claims to purchase the property from the 1st defendant. The 1st defendant had entered appearance in the said suit and filed the written statement on 08.02.2013 and thereafter, he has filed the suit in O.S.No.01 of 2014 on the file of the learned Principal District Judge, Puducherry, for a declaration that the suit property belongs to her and to declare the Sale Deed under which the revision petitioner claims title as null and void and for a vacant possession of the suit property and also for injunction to restrain the defendant/revision petitioner from encumbering and alienating from the suit property. Both the suits are with reference to the same suit property and the genesis for both the suits appears to the Power of Attorney, which the 1st defendant subsequently, on the basis of the sale deed has been executed in favour of the revision petitioner.

3. Considering these facts, the 1st respondent has moved the T.O.P/present appeal before the District Court, Puducherry for transfer and the learned Judge taking into account, the above facts, had also ordered the transfer. Specifically, stating that the same has been done to avoid multiplicity of proceedings and

variance in orders. This order is challenged in the revision.

4. Heard Mr. R. Sreedhar, learned counsel who argued on behalf of the revision petitioner. He would contend that the evidence to be let in both the suits are totally different and therefore, there cannot be a transfer. He would submit that the suit filed by him is ready for trial and the transfer is sought for only to get over the period of limitation. In this regard, a perusal and the written statement filed by the 1st respondent in O.S.No.1507 of 2012 requires the attention of this court. In paragraph No.10 of the said written statement has stated as follows:

"The Plaintiff gained knowledge of the forged sale deed dated 07.08.2008 only during the first week of July 2012 and during the month of September 2012 when the plaintiff was served with the suit summons in O.S.No.1507/2012 therefore this suit is well within limitation"

5. Therefore, the 1st respondent had made it very clear that she was not aware of the sale in favour of the revision petitioner and that the same has been done behind her back. The merits are otherwise of the said statement is subject to trail based on

the evidence to be let in, as both the suits are one and the same. The plaintiff is claiming title under a sale deed which had been executed by the 1st respondent and the 1st respondent has denied the said statement. Therefore, in my opinion, the evidence that has been let in both the cases are one and the same. In the result, this Civil Revision Petition is dismissed. No costs.

05.02.2019

jrs/arb
Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

To

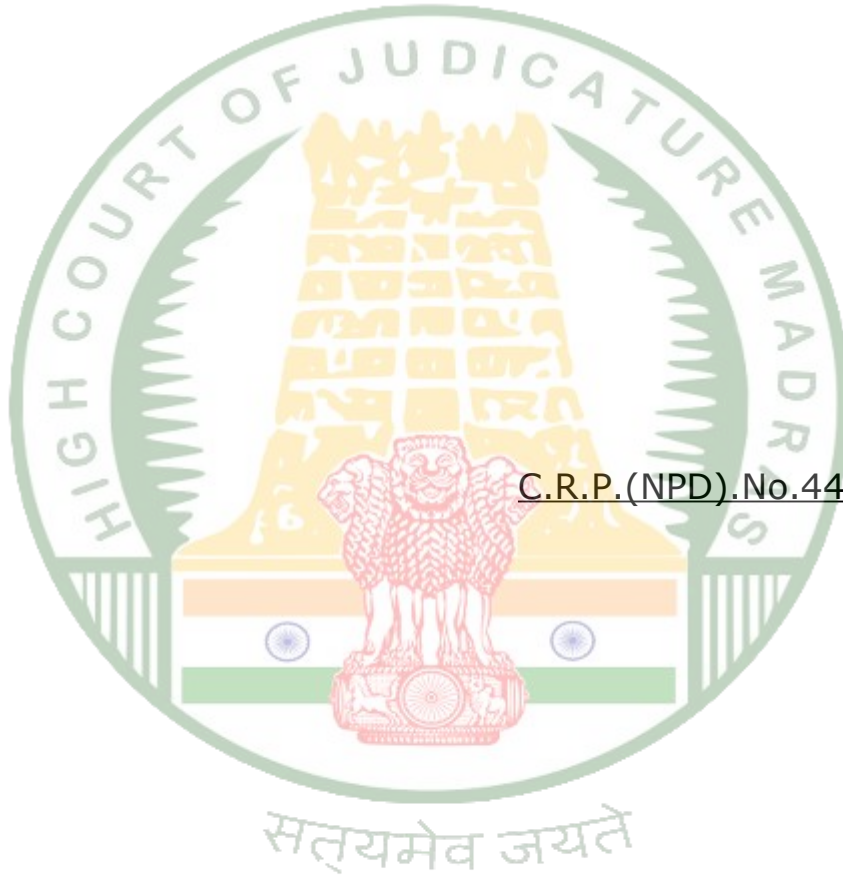
- 1.The learned Principal District Judge,
Puducherry.
- 2.The II Additional District Munsif,
Puducherry.

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P.T.ASHA.J.,

jrs/arb



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