

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.788 of 2019

&

C.M.P.No.5181 of 2019

1.Geetha Bai

2.Deepak Singh

3.Jana Pooja

...Petitioners

Vs

Kannappan

... Respondent

Prayer: Civil Revision Petition is filed Section 115 of the Civil procedure Code against the fair and decretal order dated 20.11.2018 made in I.A.No.971 of 2017 in O.S.No.32 of 2014 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

For Petitioners : Mr.S.Senthilnathan

For Respondent : Mr.S.Mohan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in I.A.No.971 of 2017 in O.S.No.32 of 2014 in and by which the application filed by the revision petitioner for condoning the delay of 544 days in setting aside the ex parte decree in a suit for specific performance has been dismissed.

2.The petitioners case was that the sale agreement was never intended to be a sale agreement but was executed only as a security for loan transaction. They would submit that the respondent herein had filed a suit for specific performance by showing the Virudhachalam address of the defendants and by effecting paper publication had obtained the ex parte decree. The revision petitioners would contend that they have already instituted insolvency proceedings in I.P.No.1 of 2014 and the respondent/plaintiff is a party to the said proceedings. The plaintiff is attempting to take away the property worth Rs.40,00,000/- for a pittance. The other reasons given was that the 1st revision petitioner was suffering from ill health and on hearing above the ex parte decree she had to be admitted in the hospital in

Salem, consequently the delay of 544 days has taken place.

3.The said application was strongly opposed by the respondent herein who would contend that the only attempt on the part of the revision petitioners was to protract the proceedings without making the payment. The Court below has ultimately dismissed the said petition by observing that after the ex parte decree, proceedings were initiated for execution of the sale deed and on 07.04.2017 the said execution petition was also ordered and thereafter the revision petitioner had filed E.A.No.18 of 2017 for the delivery of possession and it is only after the filing of this petition that the revision petitioner has moved the said application. The 1st revision petitioner has further stated that she was not living in Virudhachalam and had come to Virudhachalam to pay the loan amount and this fact has been denied by the revision petitioner who would submit that the Salem address has been given only for the purpose of creating a reason for the condonation of delay.

4.Heard, Mr.S.Senthilnathan, learned counsel for the revision petitioners, who would contend that the revision petitioner is a poor

widow and they were not aware of the proceedings as they are illiterate. That apart, the only motive of the plaintiff was to grab the property of the revision petitioners. The counsel would submit that insolvency proceedings are pending but would fairly concede that the respondent is not a party to the insolvency proceedings though it has been mentioned in the affidavit filed in support of the condonation petition that the respondent is a party to the insolvency proceedings. He would further contend that a partition suit has now been filed by her children.

5.Mr.S.Mohan, learned counsel appearing on behalf of the respondent would contend that the revision petitioner has come forward with the absolutely false case to protract proceedings as it is dismissed for default in the year 2017 itself and further the respondent was not added as a party to the I.P proceedings. He would therefore contend that the order of the learned Judge has to be confirmed.

6.Heard the counsel for the revision petitioner and the respondent and perused the papers. From a perusal of the papers, it is seen that the main averments for seeking to condone the delay is

that the revision petitioner has filed an insolvency proceedings and that there is a partition suit pending. It is seen that the I.P proceedings was dismissed for default on 04.12.2017 itself and therefore the reason given no longer exists.

Considering the fact that the suit for partition is pending, the respondent/plaintiff can workout a share in the partition proceedings if ultimately the partition suit is decreed in favour of the revision petitioners. I do not find any cause for condoning the delay and the learned III Additional District and Sessions Judge, Virudhachalam has rightly dismissed the said application. The Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

सत्यमेव जयते

05.03.2019

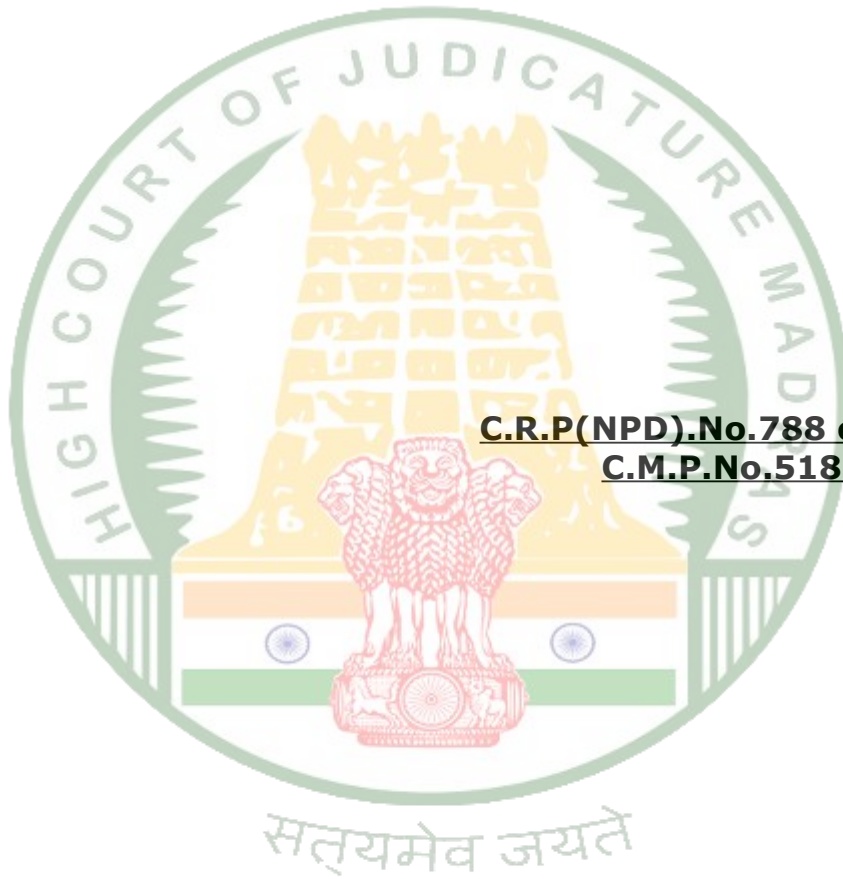
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Index : Yes/No
Speaking order/non-speaking order

To

The III Additional District and Sessions Judge,
Cuddalore at Virudhachalam.

P.T.ASHA, J.,

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