

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.3334 of 2013

1.R.S.Mohan
2.S.Mallika

.. Petitioners

..Vs..

S.Kasturi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 17.11.2012 made in I.A.No.601 of 2012 in O.S.No.442 of 2009 on the file of the learned Additional District Munsif, Kancheepuram.

For Petitioner : Mr.T.Sathiyamoorthy

For Respondent : No appearance

ORDER

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The instant revision has been filed challenging the order dated 17.11.2012 passed by the learned Additional District Munsif, Kancheepuram in I.A.No.601 of 2012 in O.S.No.442 of 2009.

Brief facts leading to the filing of the instant revision:

2. The petitioners are the defendants in the suit O.S.No.442 of 2009. The respondent who is the sister of the first petitioner filed a suit O.S.No.442 of 2009 against the petitioners/defendants for permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the suit schedule property. The petitioners also filed their written statement in the suit O.S.No.442 of 2009. Issues were also framed by the Trial Court and the trial also commenced. During the course of trial, the petitioners who are the defendants in the suit O.S.No.442 of 2009 filed I.A.No.601 of 2012 under Order VIII Rule 1(a)(3) of the Code of Civil Procedure to condone the delay in filing the documents mentioned in the petition and for receiving the same in O.S.No.442 of 2009. The documents were (a) revocation of settlement deed dated 16.12.2009 registered as document No.4136 of 2009 at SRO, Kancheepuram, (b) Will dated 16.12.2009 in favour of the first petitioner registered as document No.121 of 2009, (c) Municipal Tax Receipt dated 02.03.2011 and (d) Electricity Board Receipt dated 05.03.2011. It is the case of the petitioners as seen from the affidavit filed in support of

I.A.No.601 of 2012 that due to inadvertance, the documents were not filed earlier. A counter was also filed by the respondent/plaintiff in I.A.No.601 of 2012. The Trial Court by its order dated 17.11.2012 dismissed I.A.No.601 of 2012 in O.S.No.442 of 2009 filed by the petitioners/defendants.

3. Aggrieved by the order of dismissal of I.A.No.601 of 2012 in O.S.No.442 of 2009, the instant revision has been filed.

4. Heard Mr.T.Sathiyamoorthy, learned counsel for the petitioners. Despite service of notice on the respondent and her name having been printed in the cause list today, no one has entered appearance on her behalf.

Discussion:

5. It is the case of the petitioners that there is a Will dated 16.12.2009 executed in favour of the first petitioner who is the first defendant in the suit O.S.No.442 of 2009. The petitioners have also pleaded about the existence of the Will in their written statement filed

in the suit O.S.No.442 of 2009. The respondent has filed the suit for permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the suit schedule property. It is also the case of the petitioners that the settlement deed dated 01.08.2008 executed in favour of the respondent by the father of the first petitioner as well as the respondent was revoked by the father of the first petitioner as well as the respondent under a registered revocation of settlement deed dated 16.12.2009. All these facts have been pleaded in the written statement filed by the petitioners in the suit but along with the written statement the petitioners have not filed the revocation of settlement deed dated 16.12.2009, Will dated 16.12.2009 and other documents mentioned in the petition filed to condone the delay in filing the documents. The respondent is the sister of the first petitioner and the second petitioner is the wife of the first petitioner.

6. Having categorically pleaded in the written statement that the settlement deed executed in favour of the respondent by her father has been revoked by a revocation of settlement deed dated 16.12.2009 registered as document No.4136 of 2009 at SRO Kancheepuram and subsequently, a Will dated 16.12.2009 registered as document No.121 of

2009 was also executed in favour of the petitioners, the Trial Court ought to have allowed the application filed by the petitioners for the effective adjudication of the dispute between the parties. Therefore, this Court is of the considered view that the impugned order passed by the Trial Court is an erroneous order and has to be set aside.

Conclusion:

7. In the result, this Civil Revision Petition is allowed and the impugned order dated 17.11.2012 passed in I.A.No.601 of 2012 in O.S.No.442 of 2009 on the file of the learned Additional District Munsif, Kancheepuram is hereby set aside and the petitioners are permitted to file additional documents mentioned in the petition in I.A.No.601 of 2012 before the Trial Court. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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Index:Yes/No

Internet:Yes/No

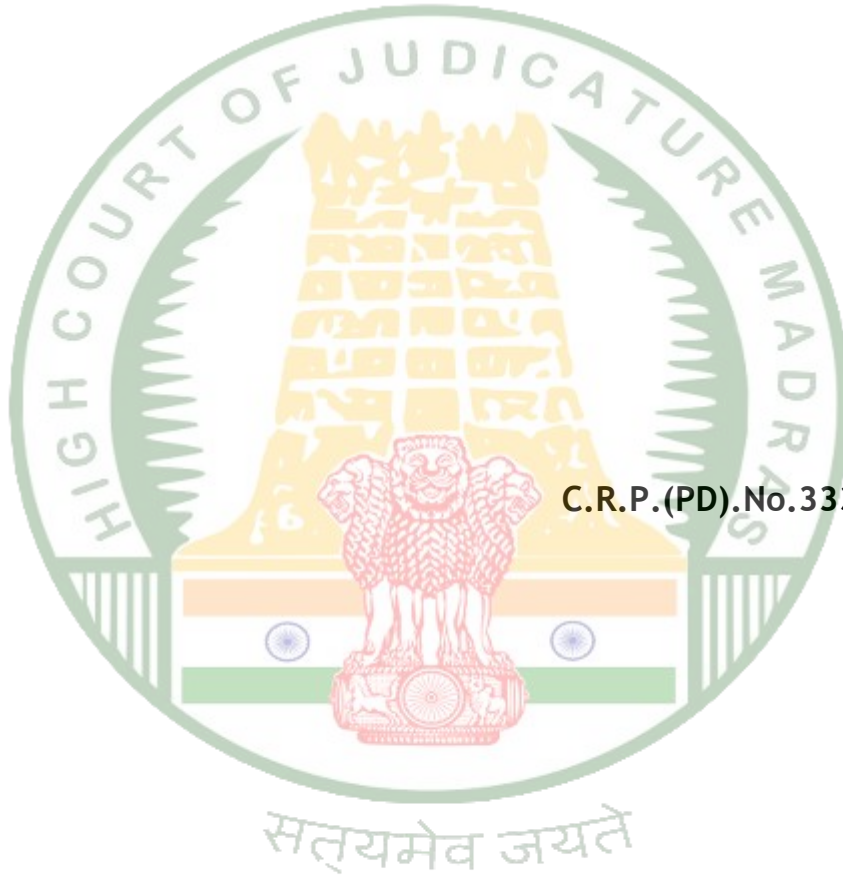
Speaking/Non-speaking orders

ABDUL QUDDHOSE, J.

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To

The Additional District Munsif, Kancheepuram



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