

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(NPD).No.882 of 2019

and

C.M.P.No.5742 of 2019

Balasubramanian

..Petitioner/Appellant

Vs

1.R.Selvapandian

2.Gopalakrishnan

3.Balasubramanian

4.Sanup

5.The Commissioner

Corporation of Chennai,

Ripon Buildings, EVR Salai,

Chennai 600 003.

..Respondents/Respondents

These Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the Order and decretal order dated 11.01.2019 passed in C.M.P.No. 523 of 2018 in A.S.No. 55 of 2016 on the file of the learned III Additional Judge, City Civil Court, Madras and allow the above Civil revision Petition.

For Petitioner

: Mr.S.Sadasharam

ORDER

The above application is filed challenging the dismissal of an application filed by the petitioner/appellant in C.M.P.No. 523 of 2018 in A.S.No. 55 of 2016, filed by the appellant/petitioner to send the

admitted signatures in Ex.A2 and A4 for comparison with signature in Ex.A1 and the plaint which is under dispute.

2 The brief narration of the facts necessary for disposing of the Civil Revision Petition is given herein below:

The first respondent had filed the suit O.S.No. 3272 of 2008, on the file of the learned V Assistant City Civil Court at Chennai, for a mandatory injunction directing the late father of the appellant herein and the appellant and 6th defendant to remove the construction that has been put up in the plaint schedule property and to direct the appellant and his father and the 6th respondent, i.e., the Commissioner, Corporation of Chennai to pay cost. The suit was vehemently contested by the father of the defendants, who had filed a detailed written statement as early as in the year November 2008, wherein the signature in the plaint had not been called into question. The suit was ultimately decreed by a Judgment and Decree dated 27.01.2016 and challenging the same, the revision petitioner/2nd defendant has filed A.S.No. 55 of 2016, on the file of the III Additional City Civil Judge, Chennai. When the matter was posted for arguments, the revision petitioner has come forward with the impugned petition and the only reason that has been given in the affidavit filed in support of the impugned petition is as follows:

"On comparison of the signatures in Exs. A-3 and A-4 namely the admitted signatures of the 1st respondent totally differ from the signatures in Ex.A-1 and in the plaint and the vital difference in all respects found in the signatures in Ex.A-1 and the plaint makes it very clear that the plaint and power of attorney document have not been signed by the 1st respondent. Ex.A-1 document is not a registered document but a notarized one. I submit that I have got my own doubt about the availability of the 1st respondent in person at Chennai on the date when the suit was filed namely on 17.04.2008. One can easily find out the vital difference in the signatures in Ex.A1 and in the plaint differing from the signatures in Ex.A-3 and A-4. As such the suit filed as framed by the 1st respondent is not maintainable in law and I submit that the power of attorney document under Ex.A-1 is also not valid in law and I submit that the 1st respondent has played a fraud on court and consequently the decree passed by the trial court is a nullity."

The said application has been dismissed by the learned III Additional Judge, who has observed that the appellant has come forward with this application, when the matter was posted for arguments and the same was only an attempt to protract the proceedings.

3 Mr.S.Sadasharam, learned counsel appearing on behalf of the petitioner would argue that this vital fact had come to

their notice only when the first appeal has been argued and since the same goes to the root of the matter, the learned Judge had erred in dismissing the application particularly, when no prejudice is going to be caused to the plaintiff.

4 Heard counsel and perused the documents.

5 I am unable to agree with the contention of the learned counsel that no prejudice is going to be caused to the plaintiff. Having contested the suit and having obtained a Judgment on merits, the defendants are now trying to overturn the judgment on a very flimsy ground that plaint is not signed by the power agent and that the signature in Ex.A1 is not the signature of the first respondent. The signature in the plaint has not been denied by the first respondent, who has contested the suit and is continuing to contest the first appeal. The reasons given are very sketchy and it appears that the defendants are "trying to clutch at straws" and that apart, there is a huge delay in taking of this application as the written statement was filed as early as in the year 2008. In the written statement, such defence has not been taken, particularly when all the documents have been available for the scrutiny of the defendants. That apart, the appeal has been filed in 2016 and till 2018 when the matter was posted for arguments, steps have not

been taken, it clearly indicates that the intention defendants was only to protract the proceedings. I find no infirmity in the order passed by the learned III Additional Judge, City Civil Court, Madras.

6 In the result, Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

06.03.2019

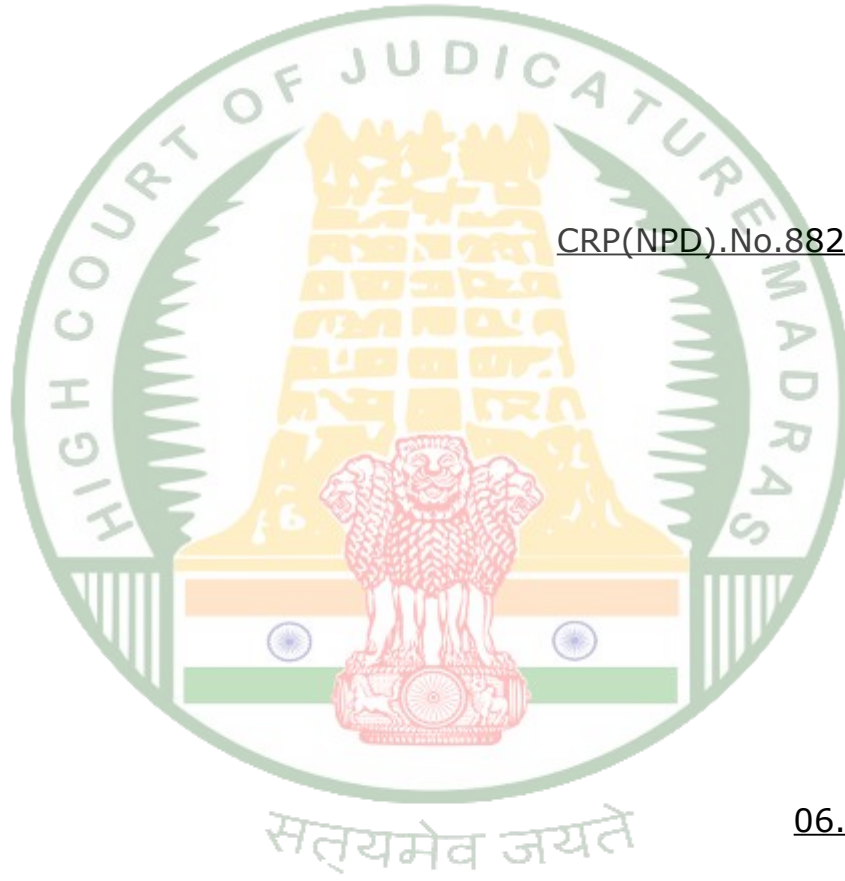
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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To
The learned III Additional Judge,
City Civil Court,
Madras.

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P.T.ASHA, J.
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