

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.2360 of 2018

and

C.M.P.No.14608 of 2018

1.Mrs.Malikkinisa

2.Mr.M.Siddiq Alias Abu Baker

... Petitioners

-VS-

Mr.Nizamuddin@ Mohammed Marzook

... Respondent

PRAYER:

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.106 of 2017(as per order I.A.No.106 of 2018 wrongly noted) in O.S.No.166 of 2016 dated 10.07.2018 passed by the learned Principal District Judge of Kancheepuram at Chengalpattu and allow this CRP by permitting the petitioners to contest the suit unconditionally.

For Petitioners : Mr.G.Ilamurugu

For Respondent : Mr.T.Ramachandran

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Kancheepuram in I.A.No.106 of 2017 in O.S.No.166 of 2016, which is an application filed by the revision petitioners herein seeking leave to defend the Suit, which has been filed under the Provisions of Order 37 Rule 5 of the Civil Procedure Code read with Section 151 of the Civil Procedure Code.

2.The Suit in O.S.No.166 of 2016 has been filed on the following basis that a Sale Deed had been executed on 22.11.2013 by the revision petitioners and the respondent, wherein a entire sum of Rs.2,12,00,000/- has been paid on a single day in cash by the plaintiff to the defendants. The plaint thereafter proceeds that though the Sale Deed was executed, the same was not registered since the defendants had not given a copy of the patta. Thereafter, the plaint states that several criminal proceedings have been filed against the defendants and in the affidavit filed by the first defendant in Criminal Original Petition No.16057 of 2014, he has agreed to settle the said amount for which post dated cheques were issued.

3.The defendants who have entered appearance after some months have filed an application seeking leave to defend the Suit, challenging the very Sale Deed, which is an unregistered and unstamped document and also questioning the cheques that have been filed and further stating that they have not received the same as contended by the respondent/plaintiff. They have also raised several other issues with reference to the maintainability of the Suit under Order 37 of the Civil Procedure Code itself.

4. These are triable issues. However, the learned Judge has proceeded to dismiss the application only on the ground that the revision petitioners have accepted the payment of money, which, in my considered opinion is not correct since the learned Judge has not considered the various issues that has been put forward by the revision petitioners, seeking leave to defend the Suit.

5. In the result, the Civil Revision Petition is allowed. The order passed by the learned Principal District Judge, Kancheepuram in I.A.No.106 of 2018 in O.S.No.166 of 2016 is set aside. Further, the learned Judge is directed to dispose of the Suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

सत्यमेव जयते **24.04.2019**

Index: Yes/No

Internet : Yes / No

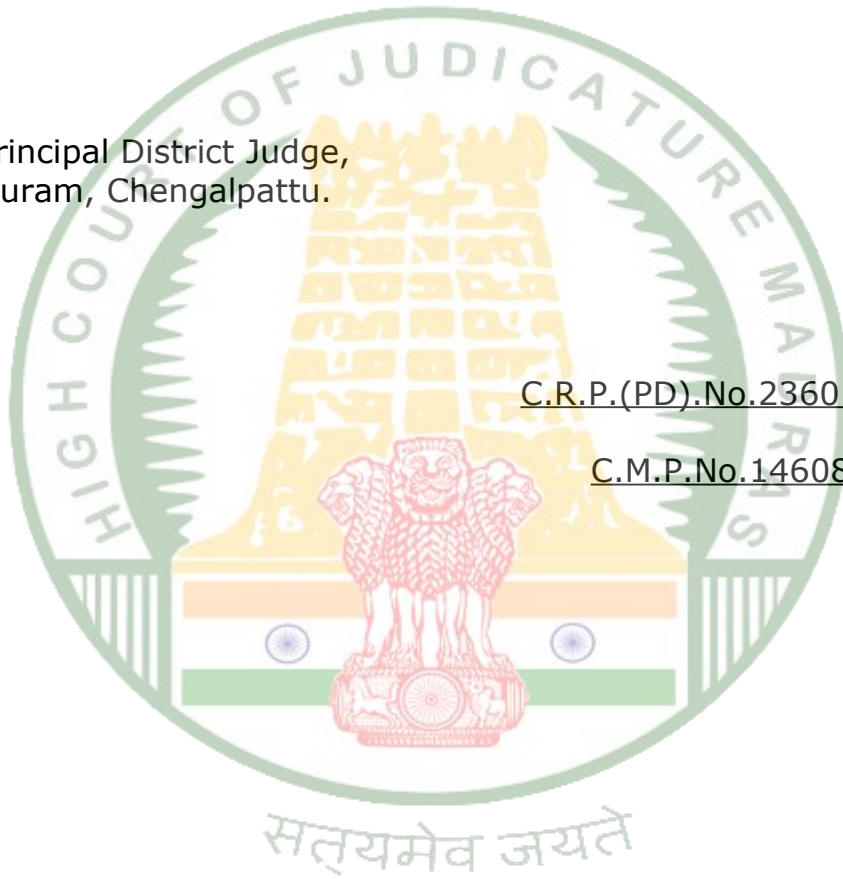
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P.T.ASHA.J.,
tsg

To

learned Principal District Judge,
Kancheepuram, Chengalpattu.



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