

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

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

CRP.(PD)Nos.2390 and 2391 of 2018

and

CMP.Nos.14746 & 14747 of 2018

C. Vijayakumar

..Petitioner in both CRPs.

Vs

1. B.K.Sundarraaj
2. R.S.Murthy
3. R. Pramila
4. R. Pushpa
5. Murugan
6. K. Suguna Murthy
7. M. Narasimman
8. N. Gopalakrishnan

..Respondents in both CRPs.

PRAYER in both CRPs.: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 11-07-2018 passed by the learned Additional District Judge, Hosur in I.A.Nos.135 and 136 of 2018 in O.S.No.48 of 2011 and allow the said I.A.

For Petitioner	: Mr. Arun Anbumani
For Respondents	: Mr. V. Lakshminarayanan for R2 to R4 R1, R5 to R8- Not ready in notice

COMMON ORDER

The above Civil Revision Petitions are filed challenging the order passed by the learned Additional District Judge, Hosur in I.A.No.135 o 2018, which is an application filed for reopening the case to permit the first defendant who is the revision petitioner herein to adduce evidence and to examine for the witnesses and I.A.No.136 of 2018, which is an application filed under section 45 of the Evidence Act to send the disputed document marked as Ex.B1 by the first defendant in the said for an expert opinion.

2. The case in brief are as follows: The first respondent/plaintiff had filed suit for specific performance together with an alternative relief for refund of the entire advance amount of Rs.45,00,000/- which, the plaintiff would plead is the amount that he had paid to the first defendant.

3. In his defense, the first defendant he would submit that it is no doubt true that he has received a sum of Rs.45,00,000/- but the entire amount was paid by him to the second defendant, who is none other than his father in law, for which he had obtained Ex.B1 receipt. The second defendant in his counter would state as follows:

26 of the plaint are not true and correct. As already stated the plaintiff has not paid any amount under the agreement of sale to the 1st defendant, and these defendants have not received any amount from the 1st defendant, and these defendants have not responsible for any refund of the amount with interest as alternate case. Admittedly the payment of 45 lakhs even if true, was made only to the 1st defendant, and it is him for to refund that amount to the plaintiff in case the Honourable Court comes to conclusion that the agreement of sale is a true one and also the payment of 45 lakhs is a true one. So far as these defendants are concerned, these defendants are not liable for refund of the amount to the plaintiff as an alternate case".

4. During the cross examination of the second defendant, the first defendant had marked the said document subject to objections and when a specific question was put to the second defendant as to whether he had any objections in the document being sent for expert opinion, the second defendant had clearly deposed that he had no objection for the same. He had however gone on to deny the signature in the said document. Without considering the categorical stand which has been taken by the first defendant in the written statement and the prayers for which the impugned applications have been filed by the first defendant, the Court below has dismissed the two applications on the ground that the reasons for reopening are insufficient and that the prayer for which the applications are filed by the defendant have to be considered by way of a separate suit and there was no necessity to

reopen the present suit. Challenging the same, the revision petitions/first respondent is before this Court.

5. Heard Mr.Arun Anbumani for the revision petitioner/first defendant and Mr. V. Lakshminarayanan for respondents 2 to 4 and Mr. Vijay for the plaintiff/first respondent. It is seen that the suit primarily turns around the alternative prayer for refund of the sum of Rs.45,00,000/-. Respondents 2 to 4 have taken a categorical defense that a sum of Rs.45,00,000/- was paid only to the first defendant and in the event of Court ultimately granting the alternative relief, it is only the first defendant who is liable to pay the sum. The first defendant on his part has clearly stated that the amount which he received from the plaintiff has been handed over by him to the second defendant for which Ex.B1 receipt has been obtained. Therefore, in the event of the alternative relief being granted and it is found that the second respondent had executed the said receipt, the petitioner/first defendant would always have a defense that he has not taken any benefit from out of the said sum and the said sum in entirety has been handed over to the second defendant is the liability of the 2nd defendant. Considering the fact that the second defendant had no objection for his signature being sent for an expert opinion, I find that the Court below has erred in stating that there was no sufficient reasons given in the application seeking to reopen the said

suit.

6. In the result, the orders of the Court below are set aside. The Civil Revision Petitions are allowed. The learned Judge is directed to send the signature of the 2nd defendant in the disputed document in Ex.B1 for comparison with the admitted signature of 2nd respondent/2nd defendant with the documents mentioned in I.A.No.136 of 2018 within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.03.2019

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

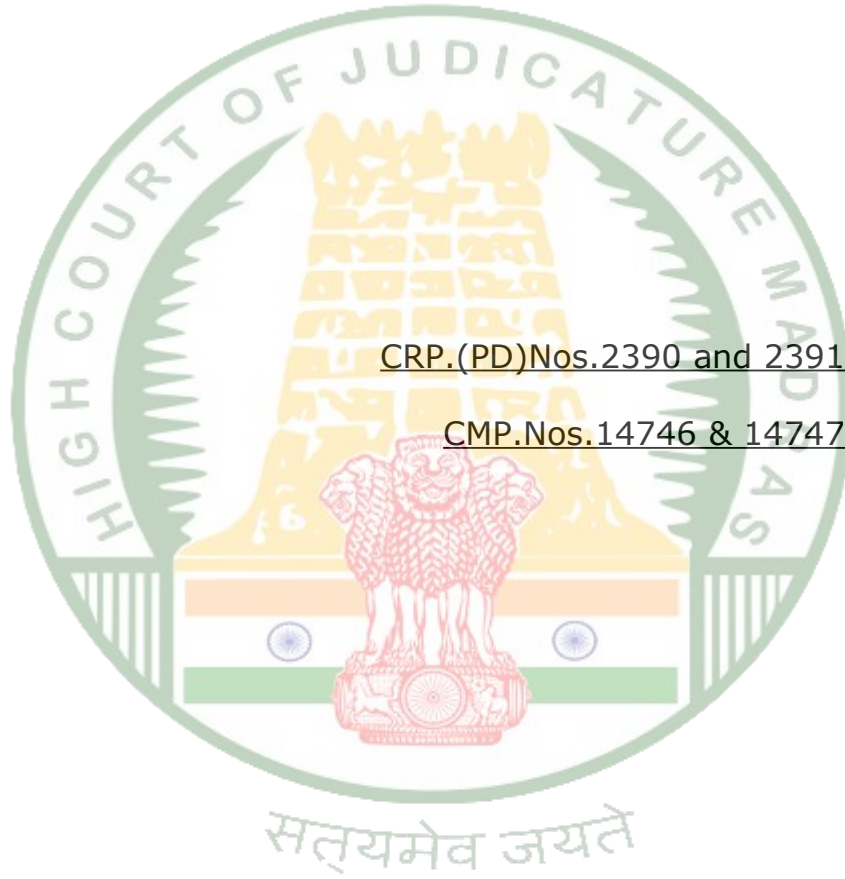
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To
The Additional District Judge,
Hosur.

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P.T.ASHA, J.,

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