

CRP (PD) NOS.2124 & 2126 OF 2019
AND 404 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NOS.2124 & 2126 OF 2019
AND 404 OF 2017

C.M.P.NOS.13689 OF 2019 AND 1858 OF 2017

CRP (PD) NOS.2124 & 2126 / 2019

1.Dhandapani
2.Ramkumar

...

Petitioners
in both CRP's

Vs.

Angamuthu

...

Respondent
in both CRP's

CRP (PD) NO.404 / 2017

Angamuthu

सत्यमेव जयते...

Petitioner

Vs.

1.Dhandapani
2.Ramkumar

...

Respondents

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CRP (PD) NOS.2124 & 2126 OF 2019
AND 404 OF 2017

PRAYER IN CRP (PD) NOS.2124 & 2126 OF 2019: Civil Revision Petitions filed under Article 227 of Constitution of India, praying to set aside the petition and order dated 10.11.2016, made in R.E.A.No. -- of 2016 in R.E.P.No.56 of 2014 in O.S.No.21 of 2006 respectively, on the file of Sub Court, Attur.

PRAYER IN CRP (PD) NO.404 OF 2017: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decreetal order in CMA No.23 of 2014 on the file of Principal District Judge, Salem, dated 30.11.2016 in confirming the order in I.A.No.410 of 2009 in O.S.No.21 of 2006, on the file of Subordinate Judge, Attur, dated 25.08.2014.

For Petitioners : Mr.V.R.Rajasekaran
in CRP (PD) Nos.2124
and 2126/2019
For Respondents
in CRP (PD) No.404/2017

For Respondent : Mr.V.Raghavachari
in CRP (PD) Nos.2124
and 2126/2019
For Petitioner
in CRP (PD) No.404/2017

COMMON ORDER

The defendants are the revision petitioners. The plaintiff / respondent filed a suit for specific performance in which the respondents remained exparte. The petitioners/defendants filed a petition to set aside

the exparte decree with a delay of 233 days. The Trial Court dismissed the petition to condone the delay and consequently dismissed the petition to set aside the exparte decree also. Aggrieved over the order, the defendants preferred a Civil Revision Petition against the dismissal of the petition to condone the delay and Civil Miscellaneous Appeal against the exparte decree passed. This Court, by its order dated 18.12.2014, has condoned the delay in filing the petition to set aside the exparte decree by imposing cost of Rs.5,000/- (Rupees Five Thousand Only) with a direction to dispose of the suit itself within a period of four months. The suit could not be disposed of due to the pendency of the Civil Miscellaneous Appeal viz. C.M.A.No.23 of 2014. Ultimately, on 30.11.2010, the Civil Miscellaneous Appeal was allowed and the exparte decree dated 11.04.2008 was also set aside. In the mean while, on 24.10.2016, the sale deed was executed in favour of plaintiff. Since the exparte decree was set aside, the petitioner challenges the same in the present Civil Revision Petition.

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2. I have heard both sides.

3. As a matter of fact, this Court by its order dated 18.12.2014 in CRP (NPD) No.4902 of 2014 has condoned the delay on payment of cost and also directed to dispose of the suit within a period of four months. The impact of the order is that once the delay is condoned, consequently the order of dismissal of setting aside the exparte decree petition was also automatically dismissed and the suit can be decided on merits. However, it was not disposed of as directed. Therefore, the ultimate intention of this Court is to direct the trial Court to decide the matter on merits rather than rejecting on technicalities. Now that the petitioner would submit that the sale deed has already been executed and therefore nothing survives for further adjudication. I am afraid that such a contention can be sustained. Once the suit is reopened, it has to be decided on merits. The petitioner is entitled to recover the expenditure incurred in execution of sale deed. This Court in *Sundrammal Vs. Karuppannan and another* [1997 (1) CTC 580] has held as under:

"7. On the basis of the above pleadings and findings of the Court below, it has to be decided whether the petitioner is entitled to get an order to set aside the ex parte decree. From the facts mentioned above, it will be clear that the petitioner engaged an advocate and instructed to file a petition to set aside the ex parte decree within 30 days, i.e. on 20.12.1993. Thereafter, an illiterate lady cannot be expected to follow it up. She has engaged the advocate to do something. The petitioner is an illiterate villager and she has no knowledge of the Court proceedings. There is no contra evidence available on record in this case. I fail to understand what more step the petitioner can take, to avoid the case being thrown out. Merely because the advocate did not take steps to bring that application earlier, the party should not be allowed to suffer. In similar circumstances, the Apex Court has held in the decision reported in *Rafiq Vs. Munshilal*, AIR 1981 SC 1400 as follows:

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of

the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job"

The above observation of the Apex Court will straightly apply to the facts of this case. The fact that the petitioner took steps to file the petition to set aside the ex parte decree immediately will clearly prove that the petitioner was diligent. The Courts below relied on the evidence of R.W.1, through that vital factor was not

mentioned in the counter, and dismissed the petition. The findings given by the Courts below on that basis cannot be sustained. I am of the opinion this matter has to be decided on merits.

8. In the result, the orders of the Courts below are set aside, and the suit is restored to file and the trial Court is directed to decide the suit on merits and in accordance with law and dispose of the suit within six months from this date.

9. It is represented that the sale deed itself has been executed, in view of the order passed in E.P.No.149 of 1994. So whatever expenses are incurred by the respondents towards the execution of the sale deed, the petitioner has to pay the said amount to the respondents. The respondents are directed to furnish those particulars of expenses regarding the execution of the sale deed, within two weeks from this date to the counsel for the petitioner and the petitioner is directed to pay that amount, within two weeks from the date of the receipt of the details of such expenses to the respondents, failing which, the order dated 14.06.1996 passed in I.A.No.79 of 1996 will stand restored. Subject to

the above observations, this revision petition is allowed.

There will be no order as to costs. Consequently,

C.M.P.No.14428 of 1996 is dismissed."

4. Following the judgment, I am inclined to direct the respondent in CRP (PD) Nos.2124 and 2126 of 2019 to reimburse the expenditure incurred by the petitioner towards execution of sale deed. Accordingly, the Civil Revision Petitions in CRP (PD) Nos.2124 and 2126 of 2019 are disposed of with the above direction.

5. In view of the order dated 18.12.2014 passed in CRP (NPD) No.4902 of 2014 and in view of the order passed in the above Civil Revision Petitions, the Civil Revision Petition viz., CRP (PD) No.404 of 2017 stands dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

6. Considering the long pendency of the appeal for a period of thirteen years, a direction is issued the trial Court to dispose of the suit within a period of four months from the date of receipt of a copy of this

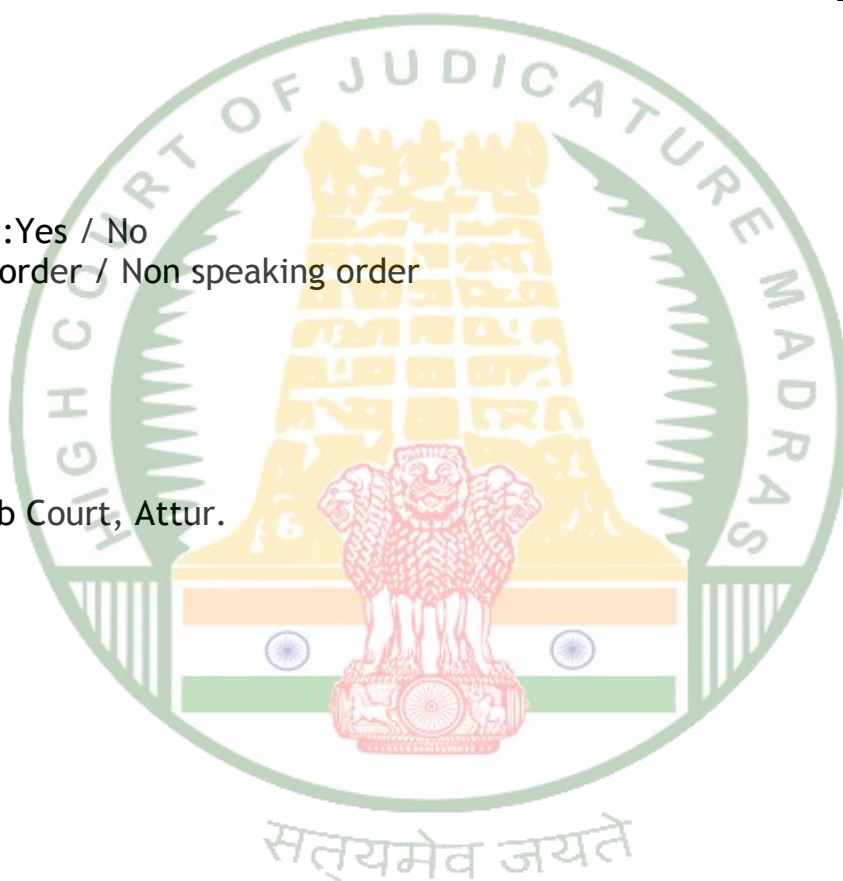
order. Both the parties are directed to co-operate in early disposal of the suit.

29.08.2019

Index :Yes / No
Speaking order / Non speaking order
bkn/tk

To

1. The Sub Court, Attur.

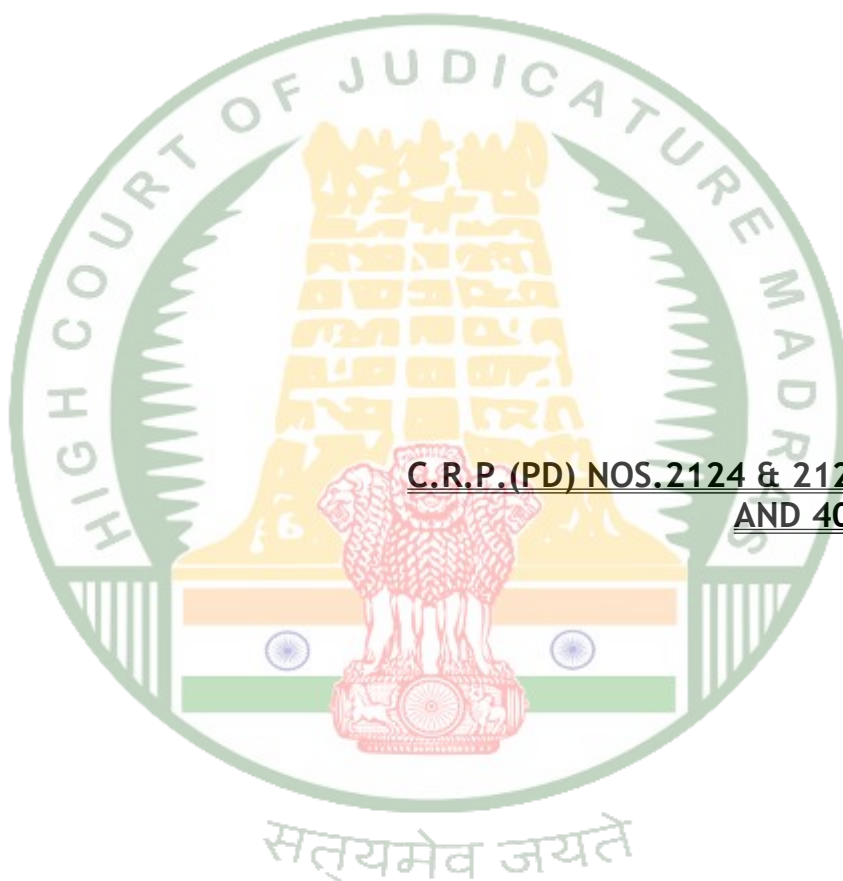


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M.GOVINDARAJ, J.

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