

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.04.2019
Pronounced On	03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1987 of 2014

and

M.P.Nos.1 & 2 of 2014

N.Rajaram

... Petitioner

vs.

1.R.Murali
 2.K.Rangarajan
 3.R.Krishnamoorthy
 4.N.Ramadoss
 5.K.Kamalam
 6.S.Kaliyaperumal
 7.Balasundaram
 8.Gandhimathi

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.134 of 2008 in O.S.No.328 of 1997 on the file of Principal Sub Court, Pondicherry dated 02.04.2014.

For Petitioner : Mr.R.Thiagarajan

For R1 : Mr.T.P.Manoharan

ORDER

The petitioner is an agreement holder had allegedly signed an agreement dated 23.09.1994 to purchase the suit schedule property from late. Kothandapani through his Power of Attorney namely 2nd, 3rd and 4th respondents.

2. The said Kothandapani had earlier executed a power of attorney dated 07.07.1994 in favour of the 2nd, 3rd and 4th respondents.

3. The said agreement dated 23.09.1994 was allegedly signed between the petitioner and the 2nd, 3rd, 4th respondents herein as the power of attorney of the said Kothandapani during his lifetime. The said Kothandapani died intestate on 21.02.1995 was impleaded as her legal representatives.

4. After the suit was filed, the 1st defendant V.Kuppammal, the mother of late Kothandapani also died on 10.06.1998. Therefore, the 5th respondent was impleaded as 5th defendant on 25.01.1999 as her legal representative.

5. The 1st defendant had allegedly executed a Will in favour of her daughter Kamalam 5th respondent before her death.

6. The 6th Respondent was also impleaded as 6th defendant to avoid multiplicity of proceedings as latter had filed O.P.No.20 of 1994 claiming himself to be legatee of Veerappa Pillai, the husband of 1st defendant V.Kuppammal under a will dated 20.02.1995.

7. The 7th and 8th respondents herein were impleaded as 7th and 8th defendants pursuant to an order of the said court on 30.06.2003 as an attempt was made to register sale deed dated 15.05.1998 to transfer the suit schedule property to them by the 1st defendant V.Kuppammal.

8. The petitioner claimed that he had paid a sum of Rs.2.5 lakhs as advance to the power of attorneys namely the 2nd, 3rd and 4th respondents and agreed to pay the balance sale consideration of Rs.2 lakhs at the time of execution of the sale deed. According to the petitioner, the time stipulated in the agreement for sale deed was three years from the date of agreement.

9. Since before the sale deed could be executed, the said Kothandapani died on 21.02.1995 intestate leaving behind his mother V.Kuppammal a legal notice dated 09.09.1997 was issued to V.Kuppammal, in her capacity as the sole surviving class I legal heir of her late son Kothandapani.

10. Since the mother of late Kothandapani i.e. V.Kuppammal did not come forward to execute the sale deed despite the above legal notice, the petitioner filed O.S.No.328 of 1997 before the Principle Sub Court, Pondicherry against the said V Kuppammal and 2nd, 3rd and 4th respondents herein who had allegedly signed the aforesaid agreement for sale of the land during the lifetime of late Kothandapani.

11. Meanwhile, The 5th respondent as the sole legal heir of the 1st defendant had sold the suit schedule properties to Tmt. Tirupurasundari wife of P.R Ramamurthy and her son Thiru.Angudass on 30.07.1998.

12. These two persons inturn sold the property to the 1st respondent on 04.12.2003 and 08.12.2003. The 1st respondent had subsequently put up the construction on the suit schedule property unaware of the above suit.

13. Mean while, since, the 5th defendant also remained absent. The suit was therefore decreed exparte on 17.07.2006. Thereafter, the petitioner filed E.P.No.185 of 2006 for execution of the exparte decree.

14. The petitioner deposited the balance amount of sale consideration pursuant to which the 5th defendant filed I.A.No.1160 of 2006 for payment out. I.A.No.1160 of 2006 was allowed on 22.12.2006. On 19.04.2007, a sale deed was executed by the Court in favour of the petitioner.

15. Under these circumstances, the 1st respondent approached P.R.Ramamurthy who facilitated the sale to him in 2003. The said P.R.Ramamurthy, who is the husband and father of his vendors is said to have informed the 1st respondent that his relative, the petitioner herein had obtained a decree in the suit for specific performance in respect of the suit schedule properties measuring 1680 sq.ft at 465, Mahatma Gandhi Road Pondicherry on 17.07.2006 and asked the 1st respondent to vacate the suit schedule property and offered to repay the actual sale consideration that was paid by him during December 2003.

16. The learned Principle Sub Judge, Pondicherry allowed I.A.No.134 of 2008 filed by the 1st respondent/3rd party. The 1st respondent in his affidavit claims that he had purchased the suit schedule property vide two registered sale deeds dated 04.12.2003 and 08.12.2003 from one said Tirupurasundari wife of P.R.Ramamurthy and their son Thiru. Angudass.

17. The 1st respondent claims that he is a bona fide purchaser of the property and was unaware of the litigations and that there was suppression of facts by P.R Ramamurthy who had been keeping an eye over the suit schedule property.

18. The 1st respondent claims that he has been in absolute possession of the suit schedule property and had put up construction and was running his clinic since then. He received a notice dated 13.06.2007 from one Mrs.Saraswathi and her husband Perumal Pillai claiming share over the suit schedule property.

19. The petitioner thereafter filed E.P.No.69 of 2007 to direct 2nd to 6th respondents to deliver the possession of the suit schedule property.

20. The 1st respondent therefore filed I.A.No.134 of 2008 under Order 9 Rule 13 read with Section 151 of CPC to set aside ex parte decree dated 17.07.2006.

21. The 1st respondent alleged that the petitioner and the said P.R Ramamurthy colluded with each other to defraud the 1st respondent and got the sale consideration from the 1st respondent and at the same time ensured that none of the defendants participated in the suit resulting in an ex parte decree on 17.07.2006. The 1st respondent submitted that he was kept completely in dark and therefore prayed for setting aside ex parte decree dated 17.07.2006.

22. In the said proceeding, the petitioner submitted that the 1st sale dated 30.07.1998 between 5th respondent-defendant and Tmt.Tirupurasundari the wife of the said P.R.Ramamurthy and their son Thiru.Angudass and the subsequent sale to the 1st respondent by the latter vide two registered sale deeds dated 04.12.2003 and 08.12.2003 were hit by *lis pendens* under Section 52 of the Transfer of Property Act,1882.

23. It was further submitted that the 1st respondent was not entitled to be impleaded. Without impleading himself in the said proceeding, the order setting aside ex parte decree was bad in law.

24. The petitioner further submitted that the 5th respondent-defendant also collected the balance sale consideration on 22.12.2006 and therefore the alleged notice dated 25.6.2007 issued by Saraswathi and her husband Perumal Pillai to the 1st respondent were vexatious and collusive.

25. The learned Principle Sub Judge, Pondicherry referred to the decision of the Honble Supreme Court in **Raj Kumar vs Sardari Lal** 2004 (1) CTC 549 and held that the 1st respondent indeed had *locus standi* to file application under Order 9 Rule 13 of CPC.

26. There the Hon^{ble} Supreme Court held as follows:-

“Transferee as representative in interest is bound by decree passed against the defendant-as representative in interest of such transferee can come on record by taking recourse to Order 22 Rule 10 during pendency of suit if Court exercise discretion in his favour. If suit has been decreed ex parte as representative in interest in view of section 146 of CPC a transferee pending litigation who is not party in such can file application to set aside ex parte decree. Decree passed against

defendant can be executed against transferee pending litigation. In such circumstances application filed to set aside ex parte decree by transferee pending litigation is maintainable. A lis pendens transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under a person.”

27. The Principal Sub Court has concluded that since the 1st respondent herein received the notice on 30.6.2007, the limitation for filing application to set aside ex parte decree would start from the date of knowledge. In this connection, reference was made to the decision of the Hon'ble Supreme Court in **N Balakrishnan vs M Krishnamurthy** 1998 (7) SCC 123 wherein it was held as follows:-

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is

that every legal remedy must be kept alive for a legislatively fixed period of time.

“These observations made by the Hon’ble Supreme Court would make it clear that the parties who approach the court should get complete justice and the doors of justice should be closed on a technical ground of limitation unless it is established that the parties are adopting dilatory tactics to drag on the proceedings.

28. Aggrieved by the said order, the petitioner/plaintiff has filed the present Civil Revision Petition.

29. Heard Mr.R.Thiagarajan, learned counsel for the petitioner and Mr.T.P.Manoharan, learned senior counsel for the 1st respondent.

30. The learned counsel for the petitioner relied upon the decision of the Hon’ble Supreme Court in **Ram Prakash Agarwal & Another V.Gopi Krishnan (Dead through L.Rs & Others)** 2013 (3) CTC 356.

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31. The learned counsel also referred to an unreported decision of this Court in C.M.A.No.694 of 2012 and M.P.No.1 of 2012 wherein following the decision of the Hon’ble Apex Court in **Sanjay Verma vs Manik Roy and others** [AIR 2007 SC 1332] the Court held as follows:-

“12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

32. Per contra, Mr.T.P.Manoharan, learned senior counsel for the 1st respondent submitted that the so-called exparte decree was no decree in the eye of law and therefore there was no necessity to interfere with the order passed by the Principal Sub-Judge, while allowing the application filed by the 1st respondent under Order 9 Rule 13 of CPC.

33. Learned counsel further submitted that the Revisional jurisdiction of the courts are intended to secure and subserve the ends of justice and not to deny or defeat it and therefore submits that the present Civil Revision Petition is liable to be dismissed.

34. If any interference is made in the peculiar facts of the case, it will result in injustice and hardship to the 1st respondent and therefore prays for its dismissal. In this connection, the learned counsel referred to the decision of this court rendered in C.R.P.No.1007 of 1969 **Chennichi vs Srinivasa Chettiar** 83 LW 366.

35. The Learned senior counsel further submitted that the 1st respondent was a *bonafide* purchaser of the property and there appears to be a large-scale collusion between his vendors and the petitioner who are related to each other who duped the 1st respondent - who is an innocent 3rd party buyer.

36. Learned counsel filed a copy of the agreement dated 23.09.1994 which was the basis of the relief for specific performance to show that the stamp paper for the same was purchased in the name of P.R.Ramamurthy, who is none other than the 1st respondent's vendor's husband and father and was closely related to be the petitioner agreement holder and decree holder. He further submits that a fraud was engineered by the petitioner and the said P.R.Ramamurthy and therefore the decree passed by the court is liable to be set aside. Therefore, the Principal Sub-Judge correctly passed the order.

37 It was further submitted that the 1st respondent purchased the property on 4.12.2003 and 8.12.2003 from his vendors unaware of the pendency of the suit. The suit was decreed exparte on 17.07.2006. The property was situated in a busy locality in Pondicherry where the 1st respondent had put up construction and was running a clinic successfully since 2003-2004. It was submitted that the petitioner should have impleaded the 1st respondent then and there instead of inviting an exparte decree to the prejudice of the 1st respondent.

38. Thus, it was submitted that on facts it is evident that the 1st respondent has been subjected to injustice as the petitioner failed to implead him.

39. Learned counsel further submitted that the decision rendered by the Honble Supreme Court in **Ramprakash Agarwal versus Gopi Krishnan** cited supra by the learned counsel for the petitioner-purchaser/agreement holder cannot be universally applied as the said decision was rendered in the context of proceedings under Section 18 of the Land Acquisition Act, 1894. It cannot be applied in the context of civil dispute.

40. Learned Senior counsel submitted that in any event there the court in para-9 observed that in any event in exceptional circumstances, the court may exercise its inherent power apart from Order 9 of CPC to set aside an ex parte decree. There the court held that a person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894 but can make an application to implead or apportionment before the reference court. There the respondent had not made an application under either of the provisions of the said act before the collector. It was therefore submitted that the said decision of the Hon'ble Supreme Court was not applicable to the facts of the present case.

41. Learned senior counsel for the 1st respondent further submitted that the doctrine of *lis pendens* allows the transferee steps in representative capacity of the parties to the suit as has been recognised by order 21 rule 16 of CPC. He drew my attention to the decision of the Honble Supreme Court in **Raj Kumar versus Sardari Lal** (2004) SCC 601, wherein it was observed that a person was liable to be proceeded against in an execution proceeding can file an appeal against the decree though not party to the suit does have a *locus standi* to move an application for setting aside an *ex parte* decree passed against the person in whose shoes he has stepped in.

42. The learned Senior Counsel referred to the decision of this Court **M.P.Kanoi and 4 others vs Mr.Palani Prop** 2001 (3) CTC 452 wherein it was held that *mere execution of an agreement of sale does not precluded the seller from executing sale deeds in favour of third parties and notwithstanding the agreements such transfer or sale would necessarily and automatically transfer title to alienees. It is only to get an effective decree such subsequent purchasers are to be impleaded as necessary parties along with the vendor. In a suit for specific performance plaintiffs must pray for execution of the sale deed by the original vendor who executed the agreement and must also seek a direction against the subsequent purchasers also to join in execution of the sale deed along with the original owner.*

43. The Court further held that it is true that normally only parties to the decree can seek to set aside ex parte decree. However, this is not an absolute rule and 3rd parties to an ex parte decree can also file an application under the civil procedure code if they have valid interest in the subject matter of the suit. The court observed that 'Infact' if they have valid interest in the sale deeds in respect of the very same property from the competent person, the plaintiffs have to claim the amounts from such persons." The court also observed that duty is cast upon the plaintiff's in the suit for specific performance to implead subsequent purchasers and since he has got only a

right to enforce the agreement and passing off title is not prevented and if the title has already passed, the plaintiff should implead the subsequent purchasers also as defendant besides the original vendors to get an effective decree.

44. The petitioner should have impleaded the 1st respondent since the petitioner should have known that the suit schedule property had been transferred to 1st respondent where the latter had put up construction and was running a clinic. Therefore, failure to implead the petitioner renders the decree passed by the court unsustainable and adverse inference should be drawn against the petitioner under Section 114 of the Indian evidence Act, 1872.

45. In this connection, the learned senior counsel referred to the decision of this court in **Kanagambaram Ammal Vs Kakammal and 5 others** 2004-4 Law Weekly 408.

46. Learned counsel further submitted that in this case the 1st respondent had tendered evidence before the Principal Sub judge, Pondicherry and had marked 5 documents and deposed evidence by getting into the

witness box. Whereas, the petitioner failed to let in any evidence. Learned counsel submitted that if a party to the suit does not appear to depose evidence and does not offer himself for cross examination by the other side, the presumption would arise that the case set up by him was not correct. In this connection he referred to the decision of the Hon'ble Supreme Court in **Vidhyadhar vs Manikrao** AIR 1999 SC 1441.

47. By way of reply, the learned counsel for the petitioner referred to the decision of the Hon'ble Supreme Court in **Lala Durga Prasad vs Lala Deep Chand and others** 1954 SCR 360 in support of his plea that the 1st respondent has to work of his remedy against his vendors. Learned counsel for the petitioner further submitted that he would file written submission by placing reliance on the decision of the Calcutta High Court in AIR 1985 Cal 82 and the decision rendered in 2005 4 CTC 121. However, no written submission has been filed.

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48. I have considered the arguments and the legal submissions of both the petitioner-agreement holder/decreed holder and that of the 1st respondent subsequent purchaser of the property. Copy of the ex parte decree passed on 17.7.2006 has not been filed. During the course of the argument, the

petitioner was asked to produce the decree. However copy of the decree also has not been furnished.

49. Be that as it may, records of the Principal Sub Judge, Pondicherry were called for perusal. The ex parte decree is not reasoned. Therefore, same is unsustainable as it is not a decree in the eye of law. It does not satisfy the requirement of section 2 (9) and Order 20 of CPC.

50. Therefore, on this count itself the ex parte decree was liable to be set aside. That apart the suit for specific performance came to be filed sometime in 1997 and during the lifetime of the 1st defendant who is said to have sold the property to 8th and 9th respondent herein. I.A No.1146 of 1998 was filed to implead them which however came to be allowed only on 30.06.2003 by which time the 1st defendant passed away on 10.06.1998 after bequeathing the properties to her daughter, namely the 5th defendant (5th respondent herein) who inturn sold the property to 1st respondent's vendors on 30.07.1998.

51. The 5th defendant was impleaded subsequently on 25.01.1999 pursuant to an order in IA.No.1771 of 1998. Thus, the property changed hands.

52. Thereafter, 04.12.2003 and on 08.12.2003, the 1st respondent purchased the property from his vendors unaware of the above developments as these are not reflected in the register maintained Sub Registrar. The 5th defendant (5th respondent) appears to have also filed I.A No.1160 of 2006 before the Execution Court for payment out also which was allowed subsequently on 22.12.2006 which appears irregular.

53. There are several factors which the 1st respondent would not have been possibly aware. The petitioner ought to have been aware of the construction put up the 1st respondent as the 1st respondent was running a clinic on the suit schedule property. Either the petitioner was negligent or was a party to the alleged fraud to dupe the 1st respondent as was alleged. Either way, before the suit was decreed, the petitioner should have taken steps to implead the 1st respondent.

54. Instead, the petitioner not only filed E.P.No.194 of 2006 to deposit the balance sale consideration but also allowed the 5th defendant (5th respondent herein) for payment out to clear the decks for execution of the sale deed which eventually was executed on 19.04.2007 by the Execution Court and registered as Document No.32 of 2007.

55. It is only at the stage of taken delivery in 2nd E.P.No.69 of 2007 filed by the petitioner and after issue of legal notice dated 25.06.2007 the petitioner became aware of the *exparte* decree passed by the court In O.S.No.328 of 1997. A *lis pendens* transferee like the 1st respondent from the defendant though not as a party to the suit is still a person claiming under the said defendant. Such transferee is entitled for an audience to be heard.

56. In this case, the 5th respondent (5th defendant) sold the property to the petitioner's vendors namely Thirupurasundari and Angudas who are wife and son of P.R.Ramamoorthy in whose name the stamp paper was purchased for preparing the agreement of sale dated 23.09.1994.

57. Further, as per the Hon'ble Supreme Court in **Raj Kumar versus Sardari Lal and others** referred to *supra* , it has been observed that the expression employed in Rule 13 Order 9 of CPC that in a decree is passed ex parte against the defendant, he may apply for an order to set aside", the word "he" cannot be construed with such rigidity and so restrictively to exclude the person who have stepped into the shoes of the defendant, from moving and application for setting aside ex parte decree especially in presence of section 146 of CPC. The court held that though *lis pendens* transferee was not party to the proceeding he was still entitled to move an application under Order 9 Rule 13 of CPC.

58. In my view, the petitioner ought to have impleaded the 1st respondent purchaser of the suit property before proceeding further and the suit. Further, there was no injunction operating against the 5th respondent from selling the property, in any event as held in **Sanjay Verma vs. Manik Roy and others** referred to *supra*, though the court held that the principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation, it also held that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The Section only

postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

59. At the same time, the Court in this case was concerned with a suit for specific performance which is statutorily recognized equitable relief. While granting such equitable relief, equitable principles, incorporated in Section 20 of the Act and should be in the forefront of the mind of the Court.

60. Further, a person seeking specific relief for specific performance of agreement should give with clean hands. A Court decreeing a suit *ex parte* should follow minimum modicum of passing a reasoned judgment. However, in the present case, I find this has not been done.

61. The petitioner is trying to assert rights over the suit schedule property based on an *ex parte* decree. *Prima facie* there appear a large scale collusion which requires a probe in a trial. Therefore, I find the Principal Sub-Judge was justified in passing the impugned order.

62. The 1st respondent is directed to file a formal application to implead himself, his vendors namely Smt.Thirupurasundari, her husband P.R.Ramamurthy and her son Angudas in the above proceeding who facilitated the sale to him. Principal District Judge, Pondicherry is directed to take up the case and dispose the same on merits within a period of nine months from the date of receipt of this order.

63. Before parting, I would like to suggest a few changes to the prevailing practices which can be adopted to the benefit of everybody. It would be advisable as a prudent practice that in all proceedings relating to immovable property particularly in a suit for partition and/or for specific performance and in a suit for a declaration of title over immovable properties, the jurisdictional Sub- Registrar should be intimated about the pendency of the litigation and appropriate entry should be made in the registers regarding pendency of such litigation in a court proceeding so that it gets reflected in the Encumbrance Certificate. Such intimation should not be construed as an injunction but should merely serve an interest of piece of information to protect the purchasers who end up investing in such properties which are subject to litigations *pendent lite* as prospective purchases are not prohibited.

64. This would not only discourage purchase of properties under litigation but also help the court to arrive at a proper conclusion as to whether the *pendent* lite purchase without permission of the Court was *bona fide* or not. If purchase is made of property under litigation, it would be calculated risk which the purchaser would have taken while making such purchase.

65. The Registrar General of this court is therefore directed to transmit a copy of this order to the Inspector General of Registration, Chennai with a covering letter to suitably direct all the jurisdictional Sub Registrars in the State to accept such entries to be made in the Register of property to reflect the same in the Encumbrance Certificate giving particulars of the pending proceedings in respect of immovable properties to enable a free flow of information regarding the status of property under litigation.

66. The Registrar General of this court also directed to issue an administrative circulars to all the courts within the jurisdiction of this High Court to insist on the plaintiff's in such suits to intimate the jurisdictional Sub-Registrars regarding pendency of the suit relating to immovable properties. This would not only weed out unnecessary litigations but also caution

prospective buyers before buying properties which are subject matter of litigations.

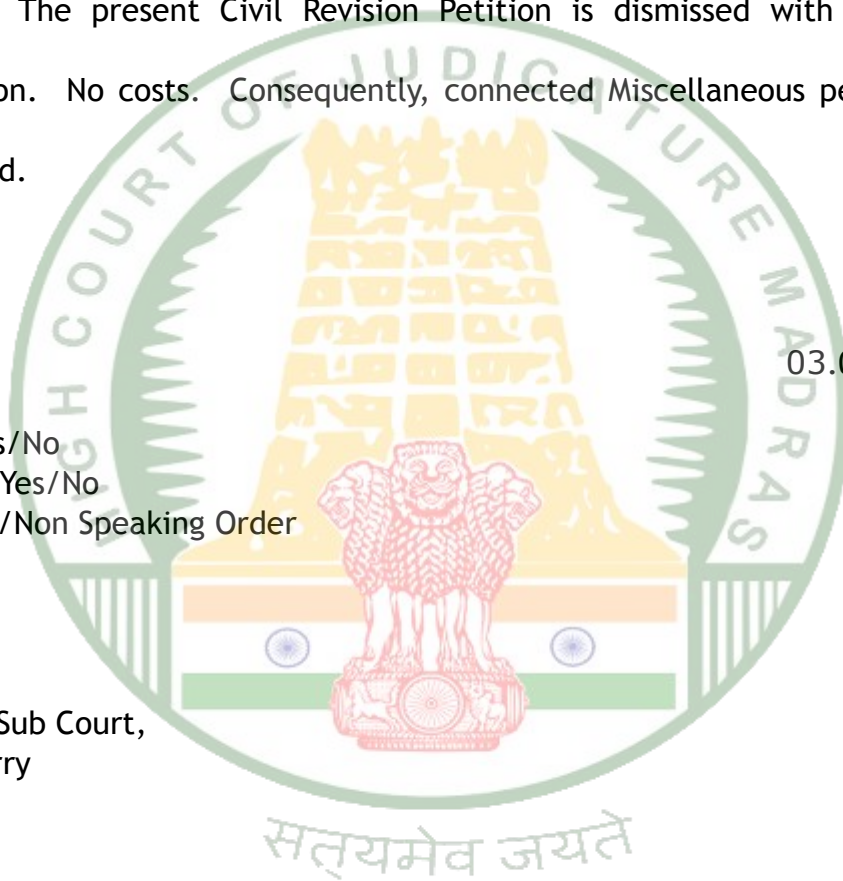
67. The present Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected Miscellaneous petitions are also closed.

03.07.2019

Index :Yes/No
Internet :Yes/No
Speaking /Non Speaking Order
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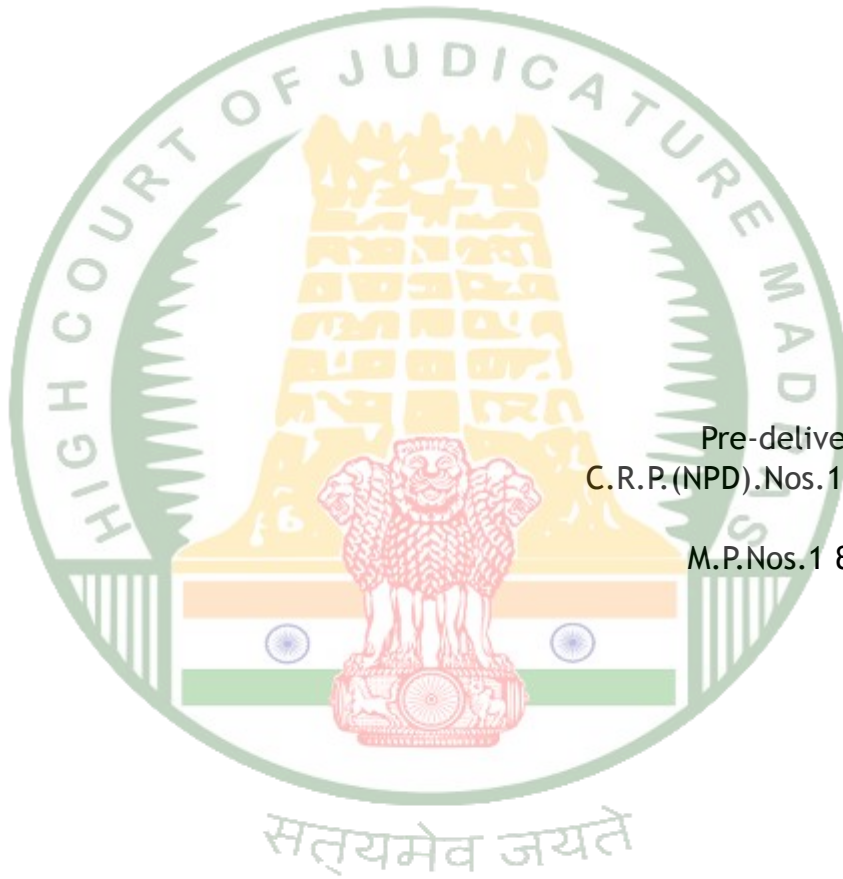
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C.SARAVANAN,J.

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Pre-delivery order in
C.R.P.(NPD).Nos.1987 of 2014
and
M.P.Nos.1 & 2 of 2014

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