

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.35 of 2014

and M.P.No.1 of 2014

Perumal

..

Petitioner / Plaintiff

versus

1.Marudhai Gounder

2.Krishnan

3.Rajagopal

4.Murugesan

..

Respondents / Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.12.2013 made in I.A.No.1321 of 2013 in O.S.No.185 of 2005 on the file of the Principal District Munsif Court, Namakkal.

For Petitioner : Mr.V.Perumal
for Mr.T.Dhanyakumar
For Respondents : No Appearance

ORDER

This Civil Revision Petition has been preferred as against the order dated 06.12.2013 made in I.A.No.1321 of 2013 in O.S.No.185 of 2005 on the file of the learned Principal District Munsif, Namakkal.

2. Before the trial Court, the plaintiff, who is the petitioner herein has filed a Suit in O.S.No.185 of 2005, as against the respondents/defendants, for the relief of specific performance, directing the defendants to execute the Sale Deed relating to the schedule property free from encumbrance in favour of the plaintiff, accepting the balance sale price of Rs.29,000/-.

3. After completing elaborate enquiry, when the case was posted for arguments on both sides, the petitioner/plaintiff has filed an application in I.A.No.1321 of 2013 and prayed to reopen his case for further submission. The learned Principal District Munsif, Namakkal, after receiving objections from the respondents, by an order dated 06.12.2013, dismissed the application stating that the reason mentioned by the petitioner/plaintiff for reopening his case, is ambiguous and not clear.

4. Challenging the said order passed by the learned Principal District Munsif, Namakkal, the petitioner / plaintiff is before this Court with the present Civil Revision Petition, to set aside the fair and decretal order dated 06.12.2013.

5. The learned counsel appearing for the petitioner would contend that only for submitting additional particulars in respect to the petitioner's case, he has filed an application to reopen his case. However, the learned Principal District Munsif, without appreciating the same and without assigning any reason, dismissed the application filed by the petitioner, which is nothing but great injustice to the petitioner.

6. Per contra, the respondents in the Civil Revision Petition had not appeared before this Court for submitting their case.

7. Now, on considering the submissions made by the learned counsel for the petitioner, it is seen in the impugned order passed by the learned Principal District Munsif, Namakkal, wherein, he has relied upon the judgment of our Hon'ble Apex Court in **VADIRAJ NAGAPPA VERNEK (D) THROUGH LRS. vs. SHARAD CHAND PRABHAKAR GOGATE** reported in **2009 SAR (Civil) 403** and thereafter, dismissed the application filed by the petitioner stating that the petitioner has attempted to fill up the lacuna.

8. The learned counsel appearing for the petitioner fairly conceded that before filing the application, the petitioner has filed his proof

affidavit and thereafter, his cross examination was also completed. In this occasion, it is relevant to see the affidavit filed by the petitioner in support of this petition. In the affidavit, nothing was averred by the petitioner about the further submissions and the request to be made after closing both sides evidence.

9. It is settled position that a party cannot be permitted by way of reopening either side case for filling up the lacuna. In fact, the said preposition is already settled by our Hon'ble Apex Court in the judgment stated *supra*. Forgetting the same, the petitioner has filed the application, which is nothing but to protract the proceedings initiated by him before the trial Court. Further, before the trial Court, on the side of the petitioner, 3 witnesses have been examined as P.W.1 to P.W.3. On the side of the respondents, one witness has been examined as D.W.1.

10. Now, on considering the averments made in the affidavit filed by the petitioner, I am of the opinion that the petitioner has not projected his case before the trial Court with sufficient cause and relevant materials. Therefore, it cannot be said that the impugned order passed by the learned Principal District Munsif, Namakkal, is having any material irregularity.

11. For the foregoing reasons, the order dated 06.12.2013 made in I.A.No.1321 of 2013 in O.S.No.185 of 2005 passed by the file of the Principal District Munsif Court, Namakkal, does not warrant any interference. Further, it is to be noted that the suit is of the year 2005 and hence, the learned Principal District Munsif, Namakkal, is directed to dispose of the suit in O.S.No.185 of 2005 as early as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order.

12. In the result, this Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

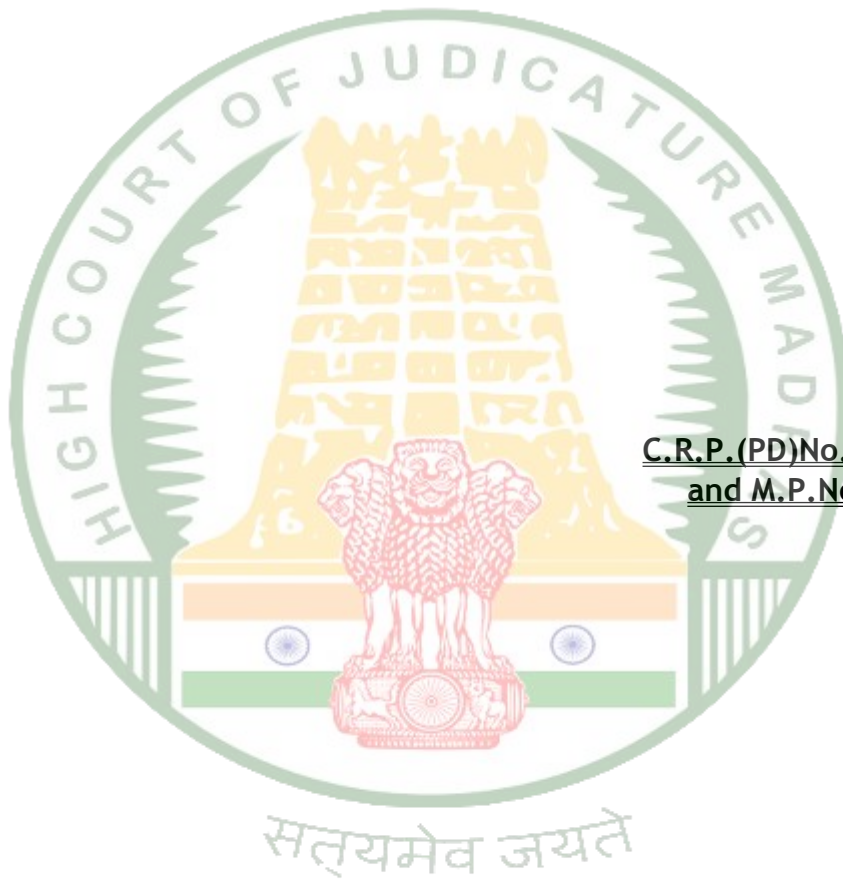
Internet : Yes

sri

To

The Principal District Munsif Court,
Namakkal.

R.PONGIAPPAN, J.,
sri



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