

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.3644 of 2014
and
C.R.P.(NPD).No.2502 of 2016
and
M.P.Nos.1 & 2 of 2014

1.M.Murugan
 2.Saroja

... Petitioners in
 both C.R.Ps.

Vs.

Devi

... Respondent in
 both C.R.Ps.

PRAYER in C.R.P.(PD).No.3644 of 2014: Civil Revision petition is filed under Section 115 of CPC, against the proceedings of the X Asst. City Civil Court, in E.P.No.2636 of 2013 in O.S.No.9072 of 2009 on the file of the X Asst. City Civil Court at Chennai dated 20.03.2014.

PRAYER in C.R.P.(NPD).No.2502 of 2016: Civil Revision petition is filed under Section 115 of CPC, to set aside the order dated 14.06.2016 in C.M.P.No.1191 of 2014 in AS.Sr.No.46873 of 2014 and condone the delay of 760 days in filing the appeal in AS.Sr.No.46873 of 2014 on the file of the Principal Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Natesh Kumar
 in both C.R.Ps.

For Respondent : Mr.T.Srikrishna Bhagavat for
 M/s.P.Subba Reddy
 in both C.R.Ps.

Both Civil Revision Petitions are taken up together and are being disposed by this common as both the case arise out same set of facts.

2.C.R.P.No.3644 of 2014 has been filed, against the fair and decreetal order dated 20.03.2014 in E.P.No.2636 of 2013 passed by the X Asst. City Civil Court, Chennai directing delivery of the property in favour of the respondent herein, pursuant to the judgment and decree dated 01.03.2012 in O.S.No.9072 of 2009 passed by the XVII Asst. City Civil Court, Chennai.

3.C.R.P.No.2502 of 2016 has been filed, against fair and decreetal order dated 14.06.2016 passed by the Principal City Civil Judge, Chennai in C.M.P.No.1191 of 2014 in AS.SR.No.46873 of 2014 dismissing the application to condone the delay of 760 days in filing the appeal against the judgment and decree dated 01.03.2012.

4.The petitioners in the both Civil Revisions Petitions are brother and sister and the legal heirs of the late Marimuthu, who died on 21.12.1982. He was allotted a tenement by the TamilNadu Slum Clearance Board in the year 1976.

5. The first petitioner was married to the respondent in the year of 1995. Subsequently, they have estranged. The respondent had thereafter filed a petition to dissolve the marriage.

6. It appears that the respondent continued to stay in the house that was allotted to the petitioner's father later Marimuthu in year 1976 by the Tamil Nadu Slum Clearance Board despite estrangement with the first petitioner.

7. During the interregnum, the respondent by a letter dated 29.04.2002 represented to the Tamil Nadu Slum Clearance Board that she was in possession of the house that was allotted to her father in law and that she had been paying monthly dues and was agreeable to pay the registration charges for perfecting title over the house.

8. Based on the same, the Tamil Nadu Slum Clearance Board also executed a sale deed in favour of the respondent on 06.09.2002

9. The first petitioner however on coming to know that the respondent had obtained a sale deed in her favour, forcefully evicted the respondent.

10. Under these circumstances, the respondent filed O.S.No.9072

of 2009. In the said suit the respondent prayed to direct the petitioners herein to quit and deliver vacant possession of suit property and for permanent injunction to restraining the petitioners from interfering with the peaceful possession and enjoyment of the suit property.

11.The Suit was contested. However, it was decreed in favour of the respondent on 01.03.2012 on the ground that:

- i) sale deed dated 06.09.2002 was executed based a G.O.No.276 dated 11.08.1977; and
- ii) that none of the legal heirs of the original allotter had got a sale deed executed in their favour.

12.Under these circumstances, the respondent filed E.P.No.2636 of 2013, which has culminated in an order dated 20.03.2013 which has given rise to C.R.P.No.3644 of 2014.

13.After the above order was passed, the petitioners herein filed an appeal vide S.R.No. 46873 of 2014 before the Principal Judge, City Civil Court, Chennai along with C.M.P.No.1191 of 2014 in S.R.No.46873 of 2014, the condone delay of 760 days in filing the appeal against judgment and decree dated 01.03.2014 in O.S.No.9072 of 2009 passed by the XVII Asst. City Civil Court, Chennai.

14.By an order dated 14.06.2016, the said C.M.P was dismissed,

on the ground that the petitioners had not properly explained the delay. The said order has given rise to C.R.P.No.2502 of 2006.

15.The XVII Asst. City Civil Court in its judgment and decree dated 01.03.2012 has concluded that the suit property has been transferred in favour of the respondent by the Tamilnadu Slum Clearance Board and since the respondent was the owner of the suit property the respondent was entitled for their relief as prayed for.

16.Documents, which have been filed before this Court *prima facie* indicate, that the suit has been decreed merely on the ground that the Tamil Nadu Slum Clearance Board has executed the sale deed in favour of the respondent over looking legitimate rights of the petitioners as legal heirs of late Marimuthu who died in the year 1982.

17.It is evident, the respondent enjoyed possession over the house as the wife of first petitioner. She has not purchased the rights the petitioners. Therefore, the fact that a sale deed had been executed in favour of the respondent cannot *ispo facto* legitimise her rights over the property with out a no objection from the Petitioners.

18. Therefore, though there is delay in filing the appeal against the judgment and decree dated 01.03.2012 passed by the XVII Asst. City Civil Court, it is evident that they were resisting the EP on the ground of alleged fraud played by the respondent in getting the sale deed executed in her favour.

19. *Prima facie* case, it appears that sale deed executed by the TamilNadu Slum Clearance Board was not regular. The fact that the TamilNadu Slum Clearance Board has also given a police complaint shows that all was not well when the sale deed was executed in favour of the respondent.

20. Therefore, the petitioners are entitled for a fair chance to contest the judgment and decree dated 01.03.2012 in O.S.No.9072 of 2009 passed by the XVII Asst. City Civil Court, Chennai, even though there is a delay in filing the appeal.

21. It is evident that the petitioners have been busy defending themselves and resisted execution proceeding and lost sight of passing of judgment and decree dated 01.03.2012 in O.S.No.9072 of 2009. They deserve a fair chance to be heard in the appeal.

22. At the same time, the respondent also deserves to be

reasonably compensated as the suit has been decreed and the EP filed by her was also allowed and the application to condone the delay in filing appeal was filed after a lapse of 760 days and after orders were passed in the E.P.

23. Consequently, the C.R.P.No.2502 of 2016 is allowed subject to payment of cost of Rs. 10,000/- to the respondent within a period of 6 weeks of communication of this order.

24. On such payment, and on production of proof of payment of the aforesaid cost to the respondent, the Principal Judge, City Civil Court shall number the appeal filed by the petitioners herein in S.R.No.46873 of 2014 and take up the appeal on merits and dispose the same within a period of six months from the date of communication of this order.

25. In view of the above, fair and decretal order dated 20.03.2014 impugned in C.R.P.No.3644 of 2014, shall be kept pending disposal of the said appeal of the petitioner. The order will stand revived subject to the outcome of the appeal of the petitioner.

26. Liberty is also given to respondent to initiate the fresh

execution proceedings subject to the outcome of the appeal. Civil Revision Petition No.3644 of 2014 thus stands ordered accordingly.

27.The Principal Judge, City Civil Court, Chennai shall endeavour to dispose the appeal of the petitioners after numbering and hearing both the parties within the stipulated period as specified herein without getting influenced by the observation touching on the merits in the present order while passing final order in the appeal.

28.Consequently, connected Miscellaneous Petitions are closed.

No costs.

14.02.2019

Index :Yes/No

Internet :Yes/No

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To

1.The Principal Judge, City Civil Court,
Chennai.

2.The X Assistant Judge, City Civil Court,
Chennai.

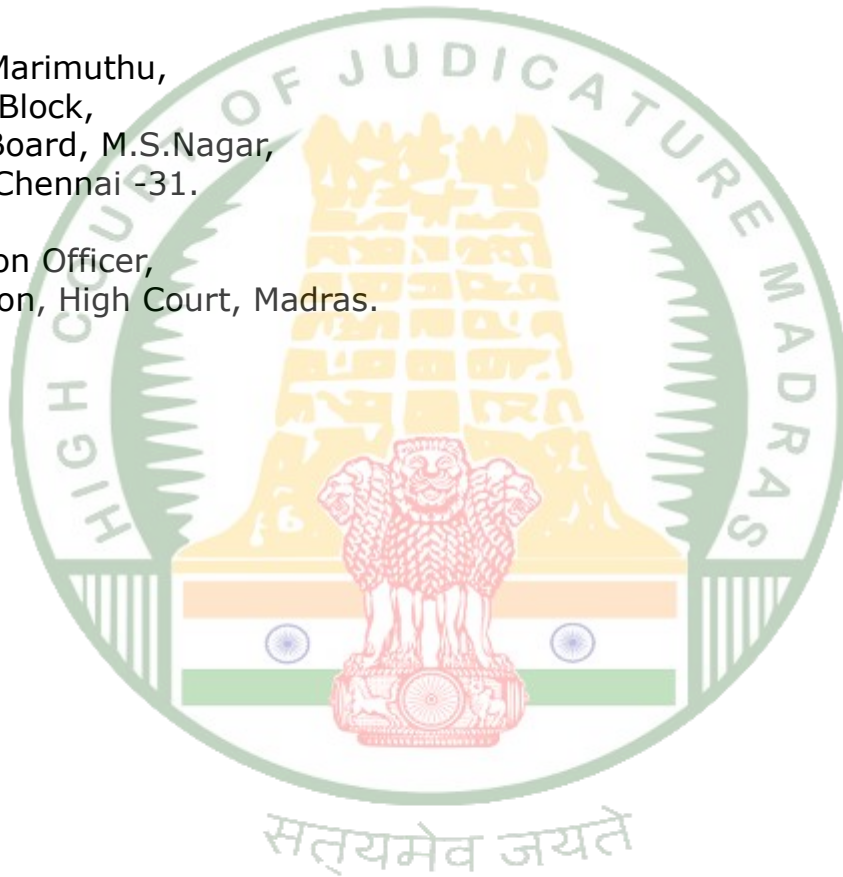
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3.The XVII Assistant Judge,
City Civil Court, Chennai.

4.M.Murugan
S/o.late.Marimuthu,
No.96, D Block,
Housing Board, M.S.Nagar,
Chetpet, Chennai -31.

5.Saroja
D/o.late Marimuthu,
No.96, D Block,
Housing Board, M.S.Nagar,
Chetpet, Chennai -31.

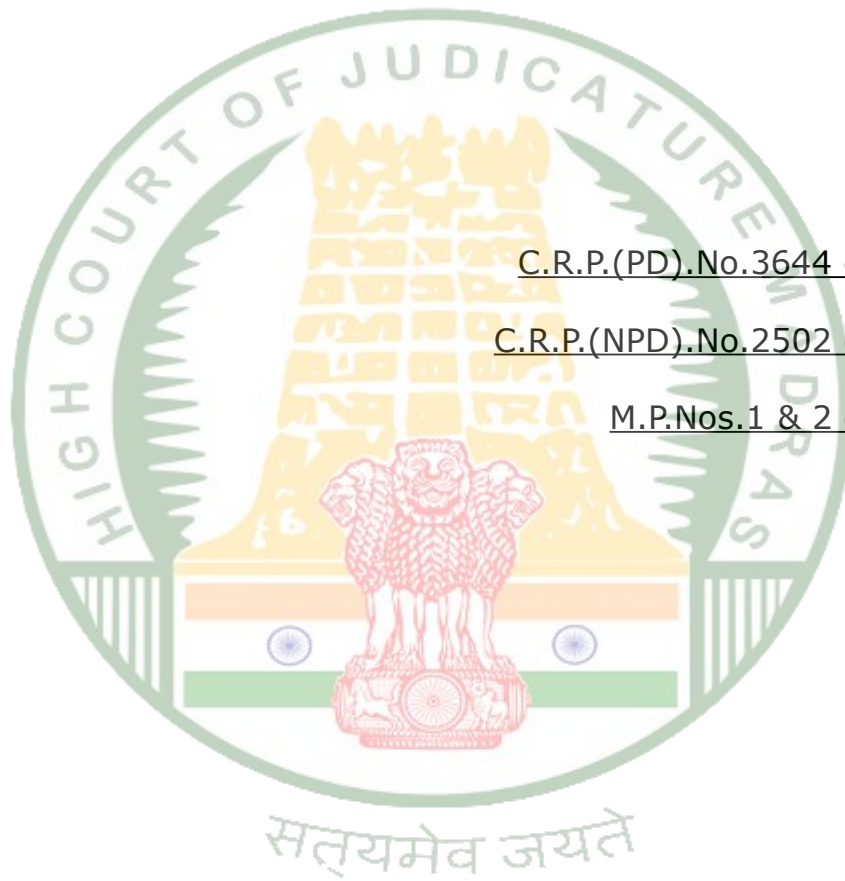
6.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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