

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date :11.12.2019

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P.(PD).No.40 of 2014

V.Varadharasu

...

Petitioner

Versus

1.C.Kumaravelu

2.Ms.Gayathri

...

Respondents

(The second respondent is set exparte before the trial Court. Hence notice may be dispensed with.)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and Decreetal order of the XV Asst. City Civil Judge, Chennai, dated 22.08.2013 made in I.A.No.2761 of 2013 in O.S.No.5670 of 2011 and thus allow the Civil Revision Petition.

For Petitioner : Ms.G.Sumitra

For Respondents : No appearance for R1

: Exparte for R2

ORDER

The Civil Revision Petition has been filed, challenging the order and decretal order of the XV Asst. City Civil Judge, Chennai, dated 22.08.2013 made in I.A.No.2761 of 2013 in O.S.No.5670 of 2011 and thus allow the Civil Revision Petition.

2. The second defendant in the above suit is the revision petitioner herein. The revision petitioner/second defendant filed an application in I.A.No.2761 of 2013, seeking to appoint one V.Purushothaman, viz., his borther, residing at No.A-73, 5th Street, Anna Nagar, Chennai – 600 102, as his Power of Attorney to continue/contest the suit proceedings. However, the Court below dismissed the application by holding that the revision petitioner is aged only 46 years and he is residing in Pondicherry, very near to Chennai and there is no impediment for him to contest the case by himself. Challenging the said order the present Civil Revision Petition is filed.

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3. The learned counsel for the revision petitioner would contend that the first respondent/plaintiff filed the suit to declare the sale deed, dated 02.11.2010, executed by the first defendant in favour of the second

defendant, revision petitioner herein as null and void. The learned counsel submitted that the revision petitioner is only a purchaser of the suit property, and it is his brother, V.Purushothaman, who made all arrangements to purchase the same and hence, he is well aware of the entire transaction and the details of the subject property, and that is the reason why, the revision petitioner intends to appoint his brother as power agent to contest the suit proceeding. The learned counsel would further contend that the revision petitioner is residing at Pondicherry and he cannot travel frequently to Chennai to contest the case and since his brother is residing at Chennai, he can very well attend the Court and pursue the suit proceedings. and therefore, in such circumstances, the revision petitioner filed the application to appoint his brother as his power of attorney to pursue the proceedings under Section 151 CPC and except for the aforesaid purpose, the revision petitioner is not having any *mala fide* intention to protract the Court proceedings. But the Court below, without appreciating all these aspects, has erroneously dismissed the application. Hence, the learned counsel prayed for setting aside the impugned order and permitting the revision petitioner to represent his case through the power agent as prayed in the I.A.No.2761/2013. Further, the learned counsel submitted that the

reason stated by the Court below for dismissing the application filed by the revision petitioner that only to protract the suit proceedings, the revision petitioner has taken out such an application is incorrect and to show his bona fide, the revision petitioner is ready to cooperate with the Court below for early disposal of the suit and sought for a direction, directing the Court below to dispose of the suit at the earliest without any delay.

4. At the time, when the Civil Revision Petition was admitted, i.e. on 30.01.2014, this Court ordered notice, and the same was also served on the contesting first Respondent. So far as the second respondent is concerned, he was set ex parte before the Court below, hence, the revision petitioner made an endorsement to dispense with the notice to the second respondent. Despite of the service of notice on the first respondent, and his name is also printed in the cause list, when the matter is taken up today, none appeared on his behalf. Therefore, this Court has ventured upon to decide this petition on merits.

5. Heard the submission made by the learned counsel appearing for

the revision petitioner and perused the material available on record.

6. The crux of the matter is that the revision petitioner intends to pursue his case through the power agent, who is none other than his brother and the reason behind is that, his brother is well aware of the transaction that took place between the revision petitioner and the first defendant and further he is also well aware of the details of the suit property. It is, in fact, his brother, who made all arrangements to purchase the property and assisted the revision petitioner in such affairs. Further, revision petitioner's brother is a resident at Chennai and therefore, it would be easy for him to contest the suit property effectively. Whereas, in the case of the revision petitioner, he is only a purchaser of the suit property and he is residing at Puducherry, and it is difficult for him to make a travel to Chennai in order to pursue the case.

7. In the light of the above facts, this Court finds that the reason assigned by the revision petitioner for appointing his brother as Power Attorney to represent his case appears to be genuine and nothing more than that. Further, it appears that the revision petitioner herein not only wants the

power agent to conduct the case, but also to depose evidence. Since his brother is aware of the transactions and details of the property and he is residing at Chennai, the revision petitioner came out with an idea and intention to appoint his brother as power agent to represent the case and apart from that this Court does not find anything much less any *mala fide* intention on the part of the revision petitioner for filing such application and the reasons assigned by the Court below to dismiss the application that the revision with an intention to protract the proceedings, has come forward with the interlocutory application is not sustainable. In fact, to substantiate this, the learned counsel also made a submission that the revision petitioner is ready and willing to cooperate with the Court below for early disposal of the suit and sought for issuing appropriate direction in that regard. Therefore, this Court is of the view that the order passed by the Court below is liable to be set aside.

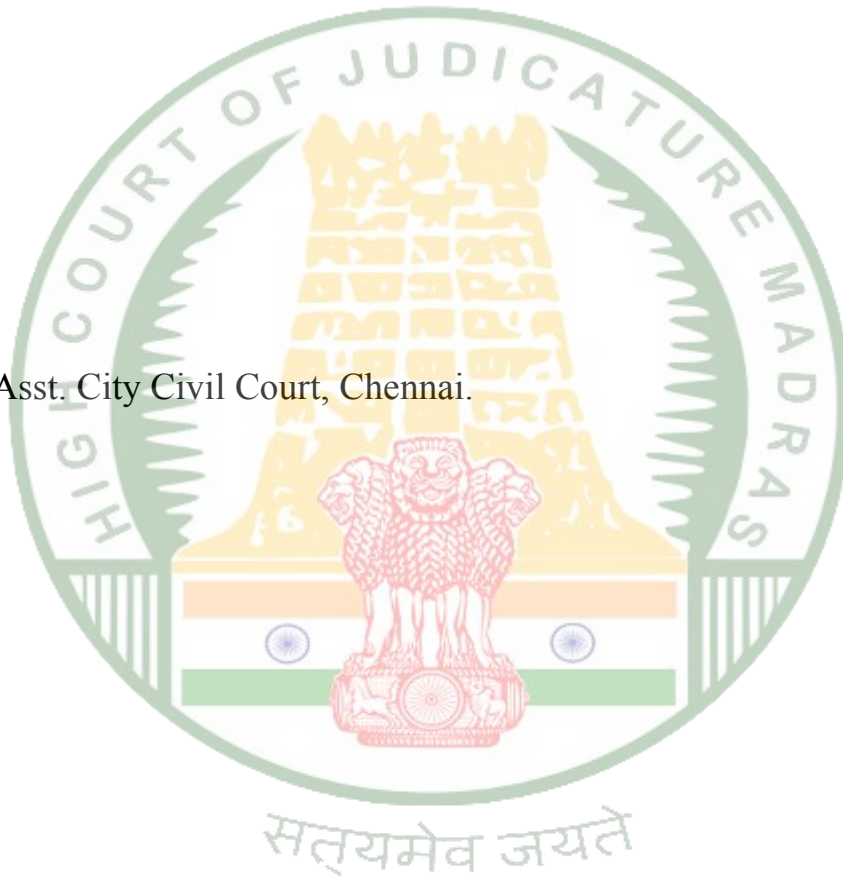
8. In the result, the Civil Revision Petition is allowed, the impugned order, dismissing the application is set aside. Since the suit is of the year, 2011, and it is pending for the past eight years, this Court directs the Court below to dispose of the suit within a period of four months from

the date of receipt of copy of this order, without seeking any extension of time. Both parties are directed to co-operate for the disposal of the suit within the time fixed by this Court. No costs.

11.12.2019

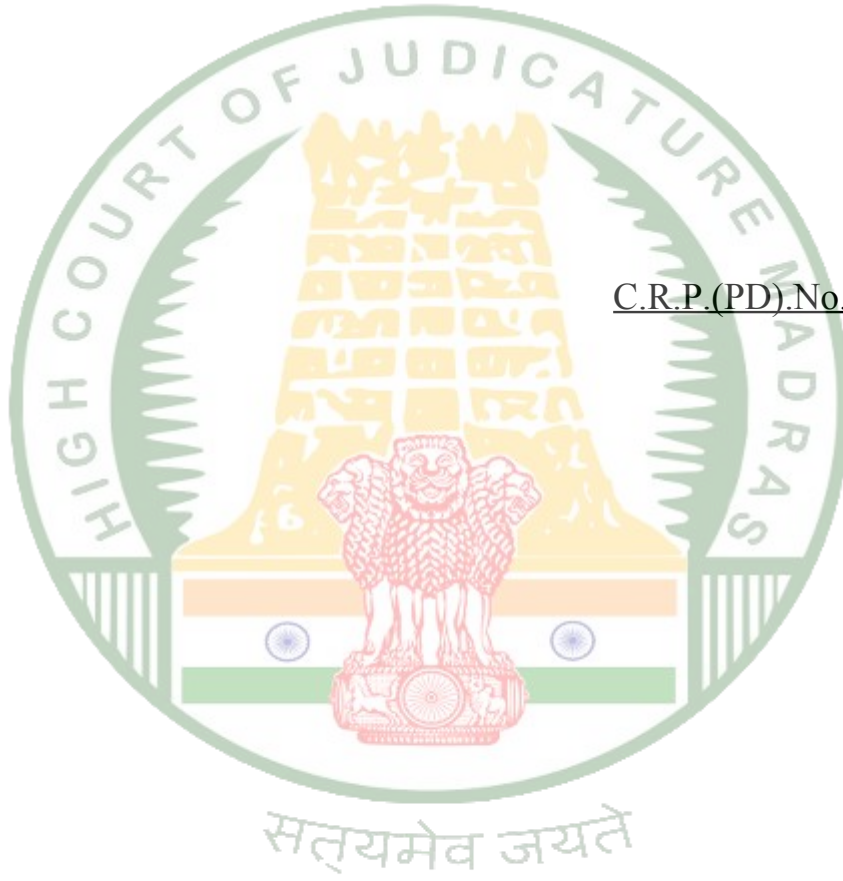
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To
The XV Asst. City Civil Court, Chennai.



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Krishnan Ramasamy. J.



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