

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4295 of 2014
& M.P.No.1 of 2014

Anjali

.... Petitioner

Vs

M.S.Mani

.... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.210 of 2012 in O.S.No.168 of 2009 dated 21.08.2014, passed by the learned Principal Subordinate Judge, Ranipet, Vellore District.

For Petitioner : Mr.P.Nagaraju

For Respondent : Mr.A.Saranraj

ORDER

Aggrieved over the order dated 21.08.2014, passed in I.A.No.210 of 2012 in O.S.No.168 of 2009, the petitioner herein, who is the plaintiff in suit, filed this Civil Revision Petition.

2. The petitioner herein as a plaintiff has filed a suit in O.S.No.168 of 2009 on the file of the learned Subordinate Judge,

Ranipet, as against the respondent and ten others and sought for the relief of specific performance directing the defendants to execute and register sale deed in favour of the petitioner at the petitioner's expenses and directing the defendants to deliver the legal possession of the suit property to the petitioner and in case the defendants reluctant to deliver possession of the suit property, the same may be effected by due process of law.

3. When the suit was posted for appearance of the defendants, they did not appear before the trial Court, even after receiving the postal notice sent by the petitioner/plaintiff. Hence, all the defendants are set exparte and thereafter after recording the evidence given by the petitioner herein, the exparte decree was passed against the defendants. In the decree passed by the trial Court, there was a direction to all the defendants to execute the sale deed in favour of the petitioner/plaintiff in respect of the suit property, after receiving the balance sale consideration of Rs.70,000/- within three months from the date of judgement. Based on the decree, the petitioner/deGREE holder filed an execution petition in E.P.No.104 of 2011, in which order has been passed in favour of the petitioner/plaintiff and ultimately the sale deed was executed by the Court in favour of the petitioner herein.

According to the petitioner, the possession has also been handed over to her.

4. Only in the said circumstances, the respondent in this Civil Revision Petition, who is the first defendant in the said suit, has filed an application in I.A.No.210 of 2012, under Section 5 of the Limitation Act, and prayed to condone the delay of 233 days in filing the set aside petition, in the above suit. The learned Subordinate Judge, Ranipet, after affording opportunities to the petitioner/plaintiff, allowed the application filed by the respondent/first defendant and condoned the delay in filing the application to set aside the exparte decree already passed in favour of the petitioner/plaintiff. Aggrieved over the said findings, the petitioner has approached this Court with the present petition and prayed to set aside the order passed in I.A.No. 210 of 2012.

5. The learned counsel appearing for the petitioner would contend that after delivering the suit property to the petitioner, set asiding the exparte decree is not fair. Further he would contend that the petitioner has already deposited the balance sale consideration to the Court and only thereafter, the Court itself executed the sale deed in

favour of the petitioner. He would further contend that the reasons stated by the respondent/first defendant for his non appearance, is not a bonafide one. Therefore, he prayed to allow this Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondent would contend that at the time of filing suit, the petitioner has mentioned a false address of the respondent/first defendant and obtained an exparte decree fraudulently. The learned Subordinate Judge, Ranipet, at the time of delivering the order clearly elicited the said fact. He has further added that since the suit is filed for the relief of specific performance, execution of sale agreement, readiness and willingness of the petitioner have to be proved for availing the decree of specific performance. Because of the reason that the sale deed was executed by the execution Court based on the exparte decree, the respondent is highly prejudice. Accordingly, the exparte decree passed against the respondent is rightly set aside by the Court below and hence he prayed to dismiss the present Civil Revision Petition.

7. Upon considering the arguments advanced by the learned counsel appearing on either side, it is an admitted fact that the

petitioner filed a suit for the relief of specific performance. In this connection, it is to be born in mind that for availing the decree of specific performance the following four aspects have to be decided:-

(i) Whether there is any negligence or delay on the part of the plaintiff.

(ii) Whether the plaintiff is having valid defence.

(iii) Whether the plaintiff has shown sufficient cause.

(iv) Whether the plaintiff has placed materials to establish and prove his readiness and willingness.

Without the above four aspects the plaintiff is not at all eligible for getting the decree of specific performance.

8. But in this present case, unfortunately, the exparte decree passed by the trial Court has been belatedly challenged by the respondent. Now on going through the affidavit filed by the respondent in support of the application, he contended that he was residing at Door No.36, Sathiya Nagar, M.S.Nagar Post, Bangalore - 33. But in the plaint the address of the respondent/first defendant was mentioned as Door No.57, Satha Nagar, M.S.Nagar Post, Bangalore-33. The said contradiction categorically revealed the fact that the summons had been

sent to the wrong address. Further both the learned counsel appearing for the petitioner and the respondent have admitted that the notice was not served with the respondent personally. According to the petitioner, the notice was served only with the wife of the respondent. So in the said circumstances, the service made on the respondent cannot be said as proper service. The learned Subordinate Judge, Ranipet, only based on the above said fact, concluded the case in favour of the respondent. In fact, there was no error found in the order given by the learned Subordinate Judge, Ranipet. I am also of the same opinion that the service effected to the respondent/first defendant is not a proper one and thereby the exparte decree passed in favour of the petitioner/plaintiff has to be necessarily set aside.

9. For the reasons stated above, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

WEB COPY

13.09.2019

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

rts

To

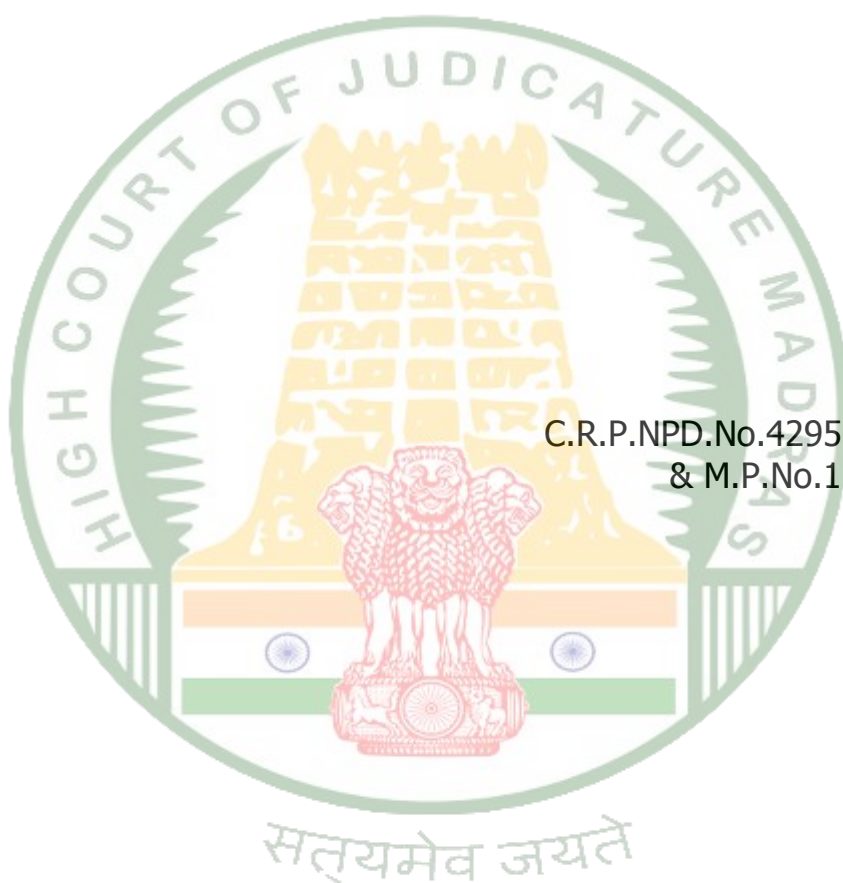
The Principal Subordinate Court,
Ranipet,
Vellore District.



WEB COPY

R.PONGIAPPAN, J.

rts



C.R.P.NPD.No.4295 of 2014
& M.P.No.1 of 2014

WEB COPY

13.09.2019