

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM

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

C.R.P.(NPD).No.4513 of 2014

and

M.P.No.1 of 2014

1.H.Easwaran

2.Mrs.E.Saroja Easwaran

3.E.Sathiyarayanan

... Petitioners

Vs.

1.E.Hariharan

2.Mrs.Geetha Hariharan

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 01.11.2014 passed in I.A.No.13081 of 2014 in O.S.No.5752 of 2013 on the file of the III Asst. Judge, City Civil Court, Chennai.

For Petitioners : Mr.S.Kanniah

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 01.11.2014 in I.A.No.13081 of 2014 in O.S.No.5752 of 2013.

2.The petitioners are the defendants in the above suit and they had filed I.A.No.13081 of 2014 in O.S.No.5752 of 2013 to reject the plaint on the ground pendency of earlier suit in O.S.No.1760 of 2013.

3.The respondents are the son and daughter-in-law of the first and second petitioner. The earlier suit in O.S.No.1760 of 2013 was filed by the respondents for a relief of permanent injunction restraining the petitioners from alienating the suit schedule property.

4.After the written statement was filed by the petitioners herein, the respondents filed O.S.No.5752 of 2013 by adding another prayer for declaring the sale deed dated 02.09.2011 registered vide document No.1914/2011 as null and void not binding on them. During the interregnum O.S.No.1760 of 2013 was dismissed for default.

5.Heard the learned counsel for the petitioners. Despite notice and name of their counsel being printed in the cause list. There is no representation on behalf of the respondents.

6.The petitioners herein filed written statement and simultaneously moved the application Order 7 Rule 11 of CPC read with Order 2 Rule 2 of C.P.C.

7.The Court concluded that without pursuing the copy of the plaint in O.S.No.1760 of 2013, it is not easy for the Court to find out whether the cause of action in both the suits are one and the same and further in the absence of the plaint in O.S.No.1760 of 2013, the plaint

in O.S.No.5752 of 2013 cannot be rejected. I have perused the documents and plaint in O.S.No.1760 of 2013 and O.S.No.5752 of 2013. Parties are same in the both suits. The documents filed in O.S.No.1760 of 2013 are the document filed in O.S.No.5752 of 2013.

8.The additional document in O.S.No.5752 of 2013 is the plaint in O.S.No.1760 of 2013. Therefore, the lower Court erred in concluding that the copy of the plaint was not available.

9.The subsequent suit in O.S.No.5752 of 2013 was thus barred under law as the respondents had not obtained leave of the Court in O.S.No.1760 of 2013 under Order 2 Rule 2 to institute a fresh suit.

10.In view of the same, I am inclined to allow the present Civil Revision Petition has not maintainable. The present Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

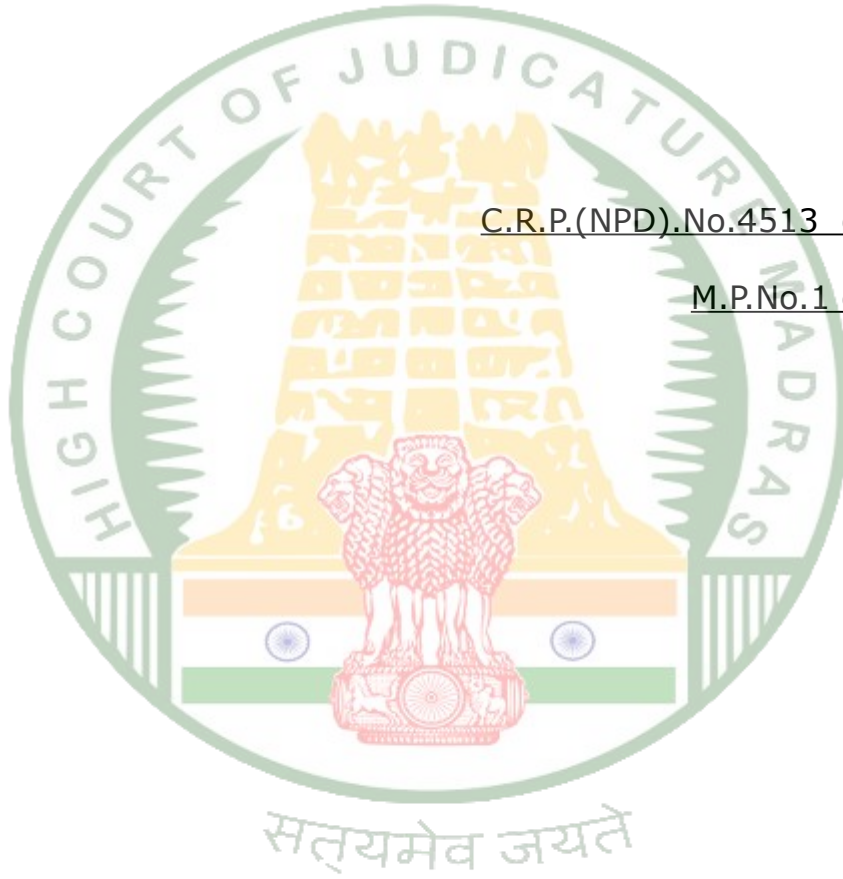
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C.SARAVANAN, J.

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To
The III Asst. Judge, City Civil Court,
Chennai.



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