

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.4792 of 2014
and
CRP (NPD) No.3868 of 2014
and
M.P. Nos.1 and 1 of 2014

Arjun Doss Mahant in
Devendar Das,
Swamy Hathiramji Mutt,
Thirupathi,
Chittoor District,
Andhra Pradesh

... Petitioner in
both CRPs

Vs

Nagoor Gani

... Respondent in
both CRPs

Prayer in CRP (PD) No.4792 of 2014 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.08.2014 in I.A.No.22 of 2013 in O.S. No.139 of 2011 on the file of the learned Subordinate Judge, Vridhachalam.

Prayer in CRP (NPD) No.3868 of 2014 : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decretal order dated 11.07.2014 in E.A.No.302 of 2013 in E.P. No.80 of 2012 in O.S. No.139 of 2011 on the file of the Principal Sub Judge, Vridhachalam.

For Petitioner : Mr.R.Selvakumar

For Respondents : Ms.R. Meenal

COMMON ORDER

CRP (PD) No.4792 of 2014 has been filed challenging the order dated 13.08.2014 passed by the learned Subordinate Judge, Vridhachalam in I.A. No.22 of 2013 in O.S. No.139 of 2011.

2. CRP (NPD) No.3868 of 2014 has been filed challenging the order dated 11.07.2014 passed by the Principal Sub Judge, Vridhachalam in E.A. No.302 in E.P. No.80 of 2012 in O.S. No.139 of 2011.

Brief facts leading to the filing of the instant Civil Revision Petitions :-

3. The petitioner in both the Civil Revision Petitions is the plaintiff in the suit O.S. No.139 of 2011 and the respondent is the 5th

defendant in the said suit. The suit was filed by the petitioner for declaration and possession. According to the petitioner, they are the absolute owner of the suit schedule properties. An ex-parte decree dated 28.11.2011 came to be passed in O.S. No.139 of 2011 in favour of the petitioner against the respondent and the suit was decreed as prayed for by the petitioner / plaintiff. The execution petition was also filed by the petitioner / plaintiff in E.P. No.80 of 2012 before the learned Principal Sub Judge, Vridhachalam to execute the judgment and decree dated 28.11.2011 passed in O.S. No.139 of 2011.

4. After filing of the Execution Petition, the respondent, who is the 5th defendant in the suit O.S. No.139 of 2011 filed an application to condone the delay of 322 days in filing an application to set aside the ex-parte decree dated 28.11.2011. The reason given in the affidavit filed in support of I.A. No.22 of 2013 is that the suit summons was served on his staff and not on him and therefore, he could not defend the suit on the hearing date by entering appearance in the suit.

5. A counter affidavit was also filed by the petitioner / plaintiff in

I.A. No.22 of 2013 denying the allegations contained in the affidavit filed in support of I.A. No.22 of 2013.

6. By order dated 13.08.2014, the Trial Court allowed I.A. No.22 of 2013 on condition that the respondent/ 5th defendant pays a sum of Rs.750/- as costs on or before 26.08.2014. The said costs has also been paid by the respondent / 5th defendant and since the respondent / 5th defendant has complied with the conditional order, I.A. No.22 of 2013 came to be allowed.

7. In E.P. No.80 of 2012 filed by the petitioner / plaintiff to execute the decree dated 28.11.2011 passed in O.S. No.139 of 2011, possession was directed to be delivered to the petitioner by the Executing Court by an ex-parte order passed in favour of the petitioner / plaintiff on 11.06.2013. Thereafter on 08.07.2013, possession has been taken by the petitioner.

8. E.A. No.486 of 2013 has been filed by the respondent /5th defendant not to record the delivery of possession in favour of the petitioner / plaintiff.

9. E.A. No.302 of 2013 was filed by the respondent / plaintiff to set aside the ex-parte order, dated 11.06.2013 passed by the Executing Court.

10. A counter was also filed by the petitioner / decree holder denying the allegations contained in the affidavit filed in support of both the applications viz., E.A. Nos.486 and 302 of 2013.

11. By Order dated 11.07.2014, E.A. No.302 of 2013 was allowed, as prayed for by the respondent / 5th defendant. Aggrieved by the order dated 13.08.2014 in I.A. No.22 of 2013 and the order dated 11.07.2014 in E.A. No.302 of 2013, the instant Civil Revision Petitions have been filed and they are disposed of by a common order.

12. Heard Mr.R. Selvakumar, learned counsel for the petitioner and Ms.R. Meenal, learned counsel for the respondent.

13. Admittedly, the suit has been filed for declaration and possession. It is the case of the petitioner / plaintiff temple that they are the absolute owners of the suit schedule property, whereas the respondent / 5th defendant claims that he is the absolute owner, as he claims right under a sale deed executed in his favour pursuant to a Will.

14. Being a suit for declaration and possession, for effective adjudication of the dispute that too when the respondent / 5th defendant has raised a plea that he is the absolute owner of the suit schedule property by virtue of a sale deed executed in his favour, the defence of the respondent / 5th defendant will have to be considered and decided on merits. Further, the delay sought to be condoned to set aside the ex-parte decree is only 322 days. The respondent / 5th defendant has stated in his affidavit filed in support of I.A. No.22 of 2013 that he did not receive the suit summons but the suit summons was received only by his staff, who did not bring to his notice.

15. The Trial Court while allowing the application viz., I.A. No.22 of 2013 has considered all these aspects and has come to the right conclusion that the delay will have to be condoned. This Court does

not find any infirmity in the order passed by the Trial Court. However, the learned counsel for the petitioner submits that the petitioner has already taken delivery of possession of the property and the said property has already been auctioned and it has now been let out to a third party, who is in possession of the property. But, the learned counsel for the respondent / 5th defendant submits that the said submission made by the learned counsel for the petitioner is incorrect. She further submitted that the respondent has already obtained an order of injunction by filing another suit O.S. No.217 of 2014 against the petitioner and others restraining them from interfering with the respondent / 5th defendant's peaceful possession and enjoyment of the suit schedule property. Since there is a dispute as to who is in possession of the property and in the interest of both the parties to the dispute, status quo as on date will have to be maintained by both the parties over the suit schedule property, which is subject to the outcome of the suit O.S. No.139 of 2011 filed by the petitioner, which has been restored under this order.

16. In view of the conclusion arrived by this Court that there is no merit in CRP (PD) No.4792 of 2014 filed by the petitioner, the connected CRP (NPD) No.3868 of 2014 also does not deserve any

merit. The Trial Court as well as the Executing Court have rightly allowed I.A. No.22 of 2013 and E.A. No.302 of 2013 respectively.

17. In the result, both the Civil Revision Petitions shall stand dismissed. However, it is made clear that the status quo in respect of the suit schedule property as on date shall be maintained by both the parties and the said status quo is subject to the final outcome in the suit O.S. No.139 of 2011.

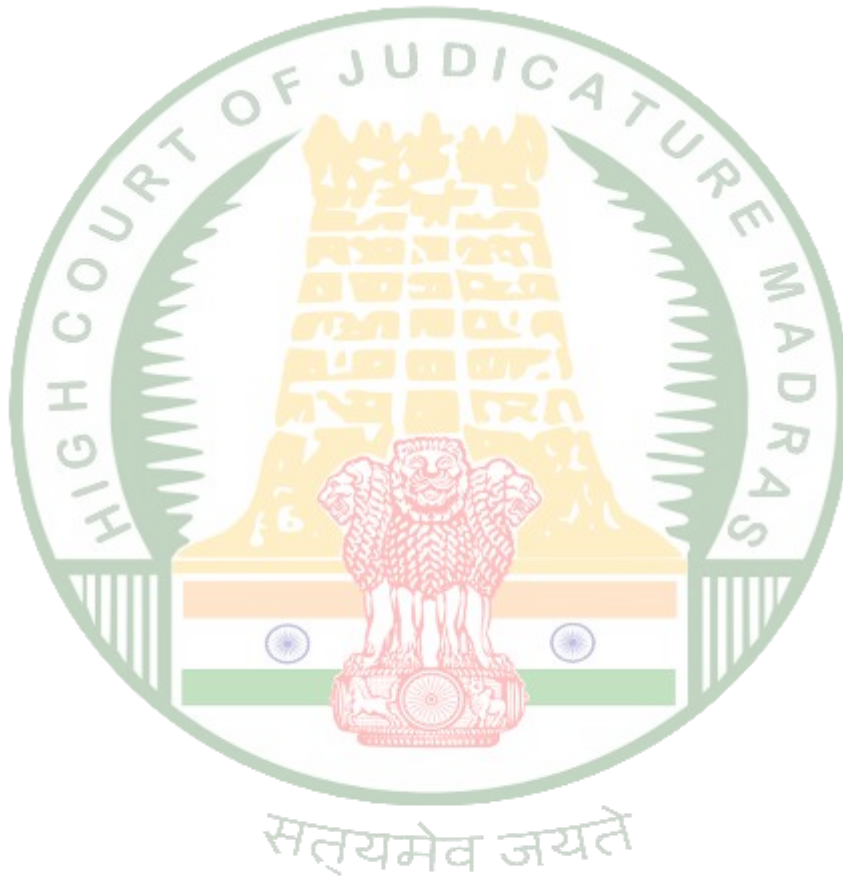
18. In view of the long pendency of the suit, this Court directs the Trial Court to dispose of O.S. No.139 of 2011, within a period of three months, after framing of issues by the Court. In view of the order passed by this Court, I.A. No.388 of 2014 filed by the respondent / 5th defendant to set aside the ex-parte decree dated 28.11.2011 in O.S. No.139 of 2011 shall also stand consequently allowed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The Subordinate Judge,
Vridhachalam.

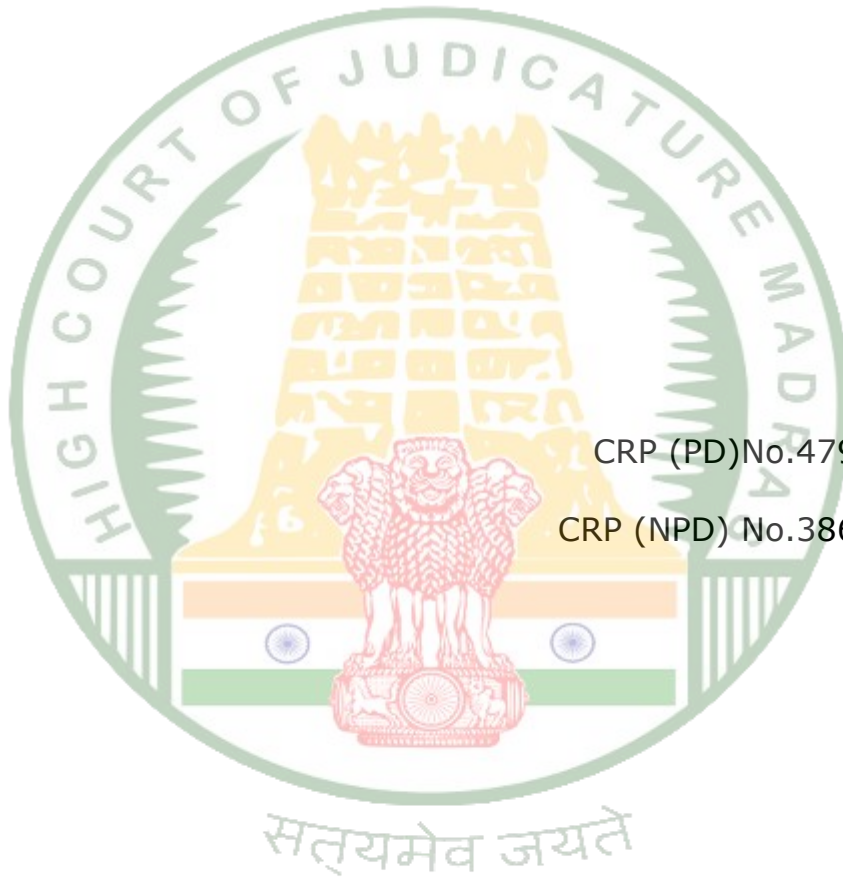


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