

C.R.P.(PD)No.2644 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD)No.2644 of 2019 & C.R.P.SR.No.90123/2019
and CMP.Nos. 17460 and 17471 of 2019

1.A.Arokiyasamy

2.Baby Arokiyasamy

... Petitioners

Vs.

1.M.Rangasamy

2.R.Srinivasan

... Respondents

Prayer in CRP.(PD)No.2644 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India to set aside fair and decreetal order dated 07.03.2019 made in I.A.No.569 of 2018 in O.S.No.96 of 2018 on the file of the learned Subordinate Judge, Sathyamangalam at Erode District.

Prayer in CRP.SR.No.90123 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the settlement memo dated 12.04.2014 made in Lok Adalat case No.164 of 2014 confirmed in judgment and decree dated 12.04.2014 made in O.S.No.21 of 2012 on the file of the learned Sub-ordinate Judge Sathyamangalam and consequentially direct the 3rd respondent to remove/delete the entry of the sale deed dated 16.12.2016 vide Document Number 5822 of 2016.

For Petitioners : M/s.V.Lakshmi Narayanan

For Respondents : M/s. I.Abrar Md Abdullah

ORDER

Both these revisions arise out of the same subject matter in two different rival suits filed by the parties.

2. The petitioner herein filed a suit in O.S.154 of 2017 and the first respondent filed a suit in O.S.No.96 of 2018 on the file of Sub-Court, Sathyamangalam. The relief sought for in both the suits are as under:

O.S.NO.154 OF 2017	O.SNO.96 OF 2018
a) declaring that the 2 nd plaintiff is the absolute owner over the suit property and consequently restraining the defendants, their men and agents from anyway interfering with the plaintiff's peaceful possession and enjoyment of the suit property	a) declaring that the plaintiff is the absolute owner of the suit property by virtue of the sale deed dated 16.12.2016 in Document No.5822/2016 of SRO/Punjai Puliyampatti
b) declare that the award passed in O.S.No.21 of 2012 by the Taluk Legal Service Authority, Sathiyamangalam, in settlement Memo in Lok Adalath case No. 164/2014 on 12.04.2014 as null and void and unenforceable against the plaintiffs	b) declaring that the award passed in Lok Adalath case No.164/2014 in O.S.No.21/2012 dated 12.04.2014 is valid and legally enforceable
c) declare that the sale deed executed by the Hon'ble Subordinate Judge, Sathiyamangalam on behalf of the 1 st defendant in favour of the 2 nd defendant on 16.12.2016 registered bearing document No.5822/2016 at Sub Registrar Office, Punjai Puliyampatti, as null and void and unenforceable against the plaintiffs	c) declaring that the sale deed dated 21.01.2011 in Doct.No.547/2011 in the name of the 3 rd defendant, executed by the 2 nd defendant is null and void
d) restraining the defendants, their men and agent from any way alienating and encumbering the suit property through the order of permanent injunction	d) to award the costs of the suit
e) award the costs of the suit	

3. In both the suits respective defendants filed petitions to reject the plaint under Or.VII R.11 C.P.C. The Trial Court rejected the suit is O.S.No.154

of 2017 on the ground that as per Sec.21(2) of Legal Services Authorities Act, Lok Adalat award shall be binding on all parties to the dispute and no appeal shall lie to any Court against the award.

4. In so far as O.S.No.96 of 2018 is concerned, the sale deed was registered by Sub-Court, Sathyamangalam and the plaint seeking to set aside that sale deed pursuant to Lok Adalat award and decree of the Court. In such circumstances, the petition under Or.VII R.11 CPC was held not sustainable and dismissed.

5. Challenging the order, in C.R.P.2644 of 2019, the petitioner seeks to set aside the order dismissing his petition filed under Or.VII R.11 C.P.C. C.R.P.Sr.No.90123 of 2019 has been preferred to strike of the settlement memo mad in Lok Adalat case No.164 of 2014 and the consequential decree and judgment dated 12.04.2014 made in O.S.No.21 of 2012 on the file of Sub-Court, Sathyamangalam.

6. In the judgment of J.Sivasubramanian and another vs. V.N.Govindarajan and another, 1998 (1) CTC 470, it is held that while

invoking superintending power over the Sub-ordinate Courts under Art. 227, the High Court can maintain a revision filed by a person who is not a party to suit to challenge the decree or judgement obtained by fraud and collusion. In view of the judgment the petitioner is entitled to maintain the revision. Hence, Leave granted. Registry is directed to number the Civil Revision Petition.

7. Brief facts are as under:

The second respondent in both the revisions purchased the suit property by way of a registered sale deed from one Anandakumar on 11.03.2010. There is no dispute that the second respondent is the owner of the property. The second respondent namely the said Srinivasan by a registered document No.1157 of 2010 appointed the petitioner as Power of Attorney on 03.06.2010. The petitioner, in the capacity of Power of Attorney executed an agreement of sale without possession by way of registered document No.3680 of 2010 dated 27.07.2010 for a sale consideration of Rs.1,00,000/- (Rupees one lakh only) on receiving a sum of Rs.80,000/- towards advance. In continuation of the same a sale deed was also registered conveying the suit property vide document No.547 of 2011 on 21.01.2011 in favour of his wife Baby Arokiyasamy as reflected in the encumbrance certificate. The required

mutations in revenue records had taken place in the very same year viz 18.03.2011 and the entries stood transferred in favour of the said Baby Arokiasamy as on 01.12.2011.

8. While the matter stood thus the first respondent namely M.M.Rangasamy in both the revisions filed a suit in O.S.No.21 of 2012 for specific performance of an unregistered sale agreement dated 10.05.2010. The second respondent being the defendant absented himself at the stage of arguments, however, the Trial Court on consideration of materials, negatived the relief of specific performance as the plaintiff failed to produce the original documents and directed the defendant to refund the advance alongwith interest by its judgment dated 22.06.2012. Eventhough the judgment was in favour of the defendant/2nd respondent, a petition to set aside exparte decree was filed and the suit was restored. Thereafter, the matter was referred to Lok Adalat and a memo of compromise was filed before Lok Adalat on 12.04.2014 and suit was decreed in terms of Lok Adalat award.

9. Even thereafter the second respondent, has failed to execute the sale deed as agreed before Lok Adalat and the first respondent filed an execution

petition in E.P.No.39/2015 for execution of the sale deed. On 09.06.2016 he filed the encumbrance certificate with respect to the suit property along with a memo signed by his counsel and the sale deed came to be executed on 16.12.2016. The original document of sale was delivered to the first respondent on 10.01.2017 and the execution petition was closed. Surprisingly, the learned Sub Judge failed to note the encumbrances, wherein the transactions dated 03.06.2010, 27.07.2010, 21.01.2011 were all entered. It is also pertinent to note that the second respondent has neither produced the parent documents to the Court nor handed over the same to the first respondent. In fact all the original documents were entrusted to the petitioner as early as in 2010.

10. When the first respondent had taken steps to take possession, it was resisted by the petitioner, which made him to file the suit for declaration of title and other reliefs in O.S.No.154 of 2017 and the first respondent filed O.S.No.96 of 2018 with similar reliefs for the same subject matter in dispute. As stated supra both filed petitions for rejection of plaint and received the fate as stated above.

11. The learned counsel appearing for the petitioner submitted that the respondents have suppressed the sale made to the petitioner and fraudulently filed a suit on the basis of a concocted sale agreement and obtained a decree collusively to defeat the rights of the petitioner. The first respondent having knowledge of the encumbrances found in the encumbrance certificate dated 09.10.2016, produced by him, played fraud on the Court and got the sale deed executed. Further he obtained the decree without impleading the title holders in contravention of Sec.19(b) of Specific Relief Act and once the first respondent with knowledge of sale to the petitioners filed the suit without claiming any relief against them, he is legally barred from praying for the relief which should have been prayed in the previous suit. The claim shall be treated as waiver as against the petitioners and the suit is barred by Or.2 R.2 C.P.C. Since the judgment obtained by playing fraud it is a nullity in the eyes of law, it shall be thrown out in limine and the Lok Adalat award shall be set aside and the plaint on the basis of the sale deed executed pursuant to the award shall be rejected.

12. He would rely on the judgment of the Hon'ble Supreme court in S.P.Chengalvaraya Naidu(dead) by L.R.s., vs. Jagannath (dead) by L.Rs and others reported in AIR 1994 SC 853; Ranipet Municipality vs.

M.Shamsheekhan, 1998 (1) CTC 66 and M.Antonysamy vs. S.Mumtaj and Others, 2018 SCC Online Mad 12537.

13. Per contra, the learned counsel appearing for the first respondent would vehemently deny the allegations of fraud attributed against the first respondent. According to him the first respondent having entered into an agreement by paying a huge advance amount towards sale consideration awaited production of revenue documents from second respondent. It is the second respondent in collusion with the petitioner played fraud upon him to defeat his rights and entered into fraudulent transaction for no consideration. The second respondent having received Rs.1,00,000/- (Rupees one lakh only) towards sale consideration, was not in financial crunch and had no necessity to receive money from the petitioner. The alleged fraudulent transactions were only with an intention to deceive him and he had fallen a victim of their foul play. He filed a suit for specific performance without the knowledge of the transactions, bonafide believing the words of the second respondent that there was no cloud over the title to the suit property then. The second respondent voluntarily came forward for a compromise and the matter was settled before Lok Adalat. No fraud was played on Court by the first respondent. Therefore

the Trial Court has rightly passed orders which does not require interference. He would rely on the judgment of Hon'ble Supreme Court in Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy & Ors, 2018 (13) SCC 480 for the proposition that award passed by Lok Adalat cannot be challenged by way of Civil suit.

14. I have carefully considered the submissions and the materials placed before the Court.

15. At the outset it is pertinent to note that the suit filed by the first respondent for specific performance was instituted on 05.03.2012. By that time the sale in favour of Baby Arokiasamy itself was completed i.e on 21.01.2011. All the entries are found in the registers of the Sub-Registrar, Puliampatti, where the registration had taken place. The first respondent must have verified the encumbrances before filing the suit on the basis of an unregistered agreement, which was said to have been entered into between parties two years before institution of the suit. The decree passed by the Trial Court on 12.04.2014, was on merits refusing to exercise its discretion in favour of the first respondent, in spite of the absence of the second respondent, who was the

sole defendant. The reason for negating the prayer was that the defendant therein could not produce documents of title, even after the extended period. Since he failed to prove his title, and the plaintiff also had not taken efforts, the relief of specific performance was denied and refund of advance amount was ordered. Even thereafter also the defendant could not produce the documents, as admittedly, they were in possession of the petitioner. Such being the case, there is no necessity for the defendant to reopen the suit which was decided on merits and to go for a settlement unless he was compelled by the first respondent. Even before the Lok-Adalat the documents were not produced, but the defendant agreed to execute the sale deed within one month.

16. Curiously the defendant failed to execute the sale deed as agreed, perhaps for the reason that he has to produce the original title deed at the time of registration before the Sub-Registrar. The first respondent might have been aware of the fact and filed an execution petition for execution of sale deed through Court. The Executing Court, in spite of production of encumbrance certificate by the first respondent containing the encumbrances of registration of Power of Attorney in favour of Arokiasamy the petitioner by the second respondent on 03.06.2010; Registration of sale agreement in favour of the

second petitioner Baby Arokiasamy by first petitioner Arokiasamy on 27.07.2010 and also the Sale deed on 21.01.2011, without noticing the same, approved the draft sale deed and executed the sale in favour of the first respondent.

17. It is very important to note that a duty is cast upon the first respondent to bring the encumbrances to the notice of the Court. Even though the court should have been more vigilant while executing the sale deed, the first respondent/decreed holder, however, cannot take shelter on the oversight committed by the Court. It is well settled principle that a litigant who approaches the Court is bound to produce all the documents, which are relevant to the litigation. The first respondent who feigned ignorance of the sale transaction during trial must have been aware of the same when he produced the encumbrance certificate on 09.10.2016 in the execution proceedings. He should have brought the same to the notice of the Court. Suppression or hoodwinking the Court of relevant materials amounts to fraud. Fraud is an act of deliberate deception with the design of securing something to one's gain by another's loss.

18. The Hon'ble Supreme Court in the judgment of S.P.Chengalvaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs reported in AIR 1994 SC 853 has held that decree obtained by fraud is a nullity. Relevant portions extracted as under:

" 1. Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

....

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."

In view of the ratio laid down by the Hon'ble Supreme Court, it is very clear that the respondents have deliberately played fraud on the Court. In the judgment of Hon'ble Supreme Court in Indian Bank vs M/s. Satyam Fibres (India) Pvt Ltd, (1996) 5 SCC 550, it is held that in order to maintain dignity to secure obedience to its process and rule, to protect its officers from indignity and administration of Court's business, the Courts whether superior or inferior are empowered to recall its orders, which are obtained by fraud. Relevant portions are extracted as under:

“ 21. In Smith v. East Elloe Rural District Council (1956) AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estates Ltd v. Beasley, Denning , L.J said:

“No judgment of a court, nor order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

31. The Privy Council in Satish Chandra Chatterjee vs. Kumar Satish Kantha Roy & Ors. Air 1923 PC 73, laid down as under:

"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who made them-- proved by established facts r inferences legitimately drawn from those facts

taken together as a whole. Suspensions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused or fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so many a clever and dexterous knave would escape.”

19. However, the Hon'ble Supreme Court in the latest judgment reported in 2018 (13) SCC 480, Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy & Ors, it has been held as follows:

“ 22. The question arose before this Court (Three Judge Bench) in the case of State of Punjab (supra) as to what is the remedy available to the person aggrieved of the award passed by the Lok Adalat under Section 20 of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the appeal pending before the High Court relating to a claim case arising out of Motor Vehicle Act. One party to the appeal felt aggrieved of the Award and, therefore, questioned its legality and correctness by filing a writ petition under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition

holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under Article 226 or/and 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.

23) This is what Their Lordships held in Para

“12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is

signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

24) In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for

quashing the award and, if so, whether those grounds are sufficient for its quashing.”

20. In view of the above pronouncement, it is very clear that the Lok Adalat award can be questioned only under Art.226 or 227 of the Constitution of India and it cannot be assailed before the Civil Court by filing a suit.

The facts discussed in the foregoing paragraphs in the light of the above mentioned pronouncements lead us to infer that

a) the second respondent is undoubtedly guilty of playing fraud on both petitioners and also on the first respondent to some extent. Not only on them but also on the Court by suppressing material facts relevant to the suit for specific performance. He allegedly entered into a sale agreement with the first respondent on 10.05.2011 and registered a Power of Attorney in favour of the 1st petitioner and entrusted all the original documents to him. Even assuming that the 1st petitioner played fraud on him or got the Power of Attorney by force, he has not chosen to challenge the Power of Attorney or Sale deed registered on 21.01.2011 till date. The conduct raises serious doubts as to the very execution of Sale agreement dated 10.05.2011 and it might be a fabricated document to defeat the rights of the petitioners in collusion with the first

respondent. This suspicion is further fortified by his conduct in restoring the suit, dismissed in his favour for specific performance on merits and entering into a compromise to execute the sale deed in favour of first respondent without producing title deeds and revenue records.

b) In so far as the first respondent is concerned, he, on his part alleges that he bonafide believed the words of the second respondent for two years that he has valid and marketable title. That too, even after the second respondent's failure to produce the revenue records and his dodging to execute the sale deed. In spite of the absence of second respondent at the stage of arguments Trial Court by its judgment dated 22.06.2012 refused to exercise its discretion in favour of first respondent/plaintiff for non-production of documents. The first respondent had not verified the revenue records, encumbrance certificate and factum of possession despite the fact he prosecuted his rights in a Court of Law on legal advice for more than two years. The conduct of the first respondent in not verifying encumbrance upto that date, not insisting for title deeds even during Lok Adalat settlement and in not incorporating conditions in the memo of Compromise for handing over original documents, naturally, evokes suspicion as to the bonafide and ignorance feigned by him.

c) The conduct of both the respondents probabalize that they had

knowledge of the prior transactions with respect to the suit property, which are material relevant for deciding the discretionary relief. In order to thwart the rights of the petitioners and for the purpose of taking undue gains, indulged in collusive act of entering into a settlement before Mega Lok Adalat.

21. The overall appreciation of above facts in tune with the pronouncements of Hon'ble Supreme Court, lead this Court to the irresistible conclusion that the settlement arrived at Lok-Adalat is collusive and thereby fraud was played on Court. Therefore the settlement memo and award of Lok Adalat case No.164 of 2014 and the consequential judgment and decree dated 12.04.2014 passed in O.S.No.21 of 2012 on the file of Sub-Court, Sathyamangalam stands set aside.

As a natural corollary to the above decision

a) The suit in O.S.No.21 of 2012 on the file of Sub-Court Sathyamangalam, stands re-opened for further proceedings.

b) O.S.No.96 of 2018 on the file of Sub-Court, Sathyamangalam for declaration of title based on the sale deed dated 16.12.2016 executed by Sub-Judge pursuant to Lok Adalat Award and judgment in O.S.No.21 of 2012 dated 12.04.2014 is struck off.

c) The prayer for declaration to declare the Lok Adalat award and to set aside the sale dated 16.12.2016, having become infructuous, O.S.No.154 of 2017 is restored to the file of Sub-Court Sathyamangalam only in respect of the remaining prayers a) for declaration of title and d) permanent injunction.

22. Since it is found that the registration of sale deed dated 21.01.2011 has created third party rights, it is necessary to implead the petitioners in O.S.No.21 of 2012 to pass a binding judgment on the parties.

23. This Court in order to avoid further wastage of time in impleading the parties, suo motu implead the petitioners as defendants in O.S.No.21 of 2012. The Trial Court is directed to permit the parties to carry out necessary amendments to the cause title and the pleadings relevant to the facts of the case.

24. Considering the litigation between same parties over the same subject matter, a direction is given to the Trial Court to take up both suits viz., O.S.No.21 of 2012 and O.S.No.154 of 2017 together and at its discretion conduct simultaneous or joint trial and conclude the proceedings as expeditiously as possible preferably within a period of six months. It goes

without saying that parties shall co-operate for speedy trial as undertook by the respective counsel before this Court.

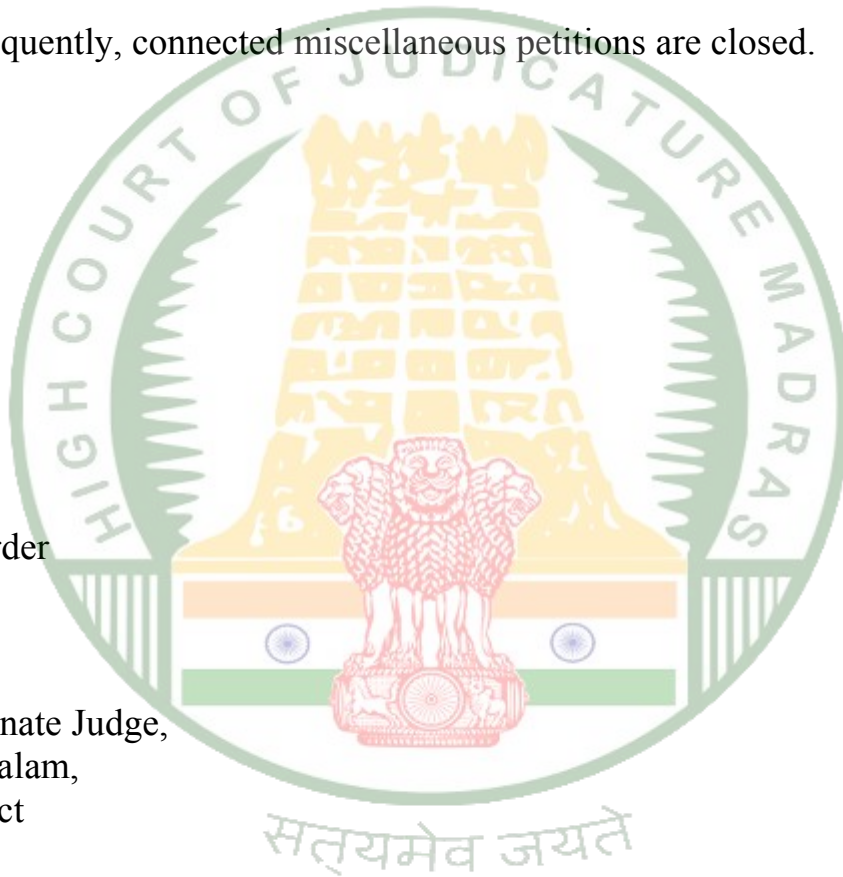
Civil Revision Petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2019

Index: Yes
Internet: Yes
Speaking Order

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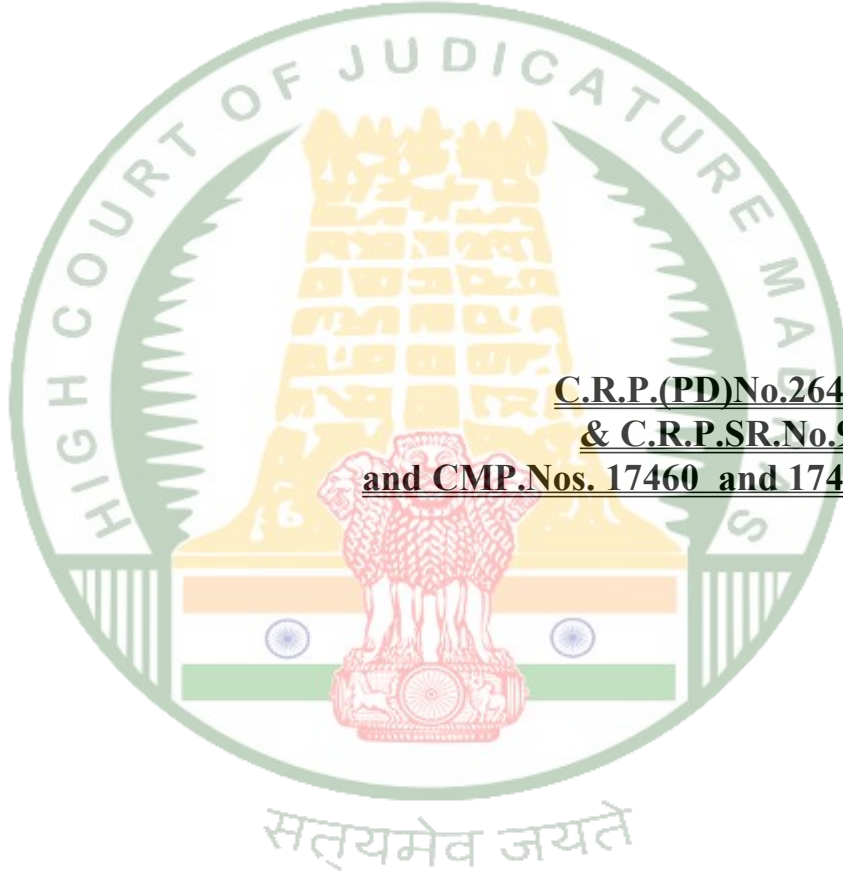
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