

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.2980 of 2018

&

C.M.P.No.17418 of 2018

A.Ramya

...Petitioner

Vs

T.Tamilselvi

... Respondent

Prayer:Civil Revision Petition is filed Article 227 of the Constitution of India against the fair and decreetal order dated 07.08.2018 passed in I.A.No.333 of 2018 in O.S.No.1091 of 2017 on the file of the II Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.T.Sundaranathan

For Respondent : Mr.S.Arivazhagan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the II Additional District Munsif, Coimbatore, dismissing the application for rejecting the suit filed by the plaintiff/respondent. Brief facts that has preceeded the filing of the application for rejection of the plaint and consequently the revision are as follows:

2.The revision petitioner had filed a suit O.S.No.856 of 2012 on the file of the III Additional District Munsif, Coimbatore, for the following reliefs:

"a)Declaring that the alleged sale deeds dated 01.10.1997 and 17.09.1999 executed by the 2nd defendant with respect to the suit property in favour of the 1st defendant are fraudulent and null and void and not binding on the plaintiff.

b)Directing the 1st defendant to hand over the vacant possession of the suit property to the plaintiff without any let or

hindrance.”

3.The suit was filed with reference to A and B – Schedule properties which are also the subject matter of the suit O.S.No.1091 of 2017. In the above suit, viz; O.S.No.856 of 2012, the respondent had entered appearance and filed a detailed written statement but thereafter had not proceeded to contest the said suit. Ultimately, by the Judgement and Decree dated 18.11.2016, the learned III Additional District Munsif, Coimbatore, was pleased to declare the sale deeds dated 01.10.1997 and 17.09.1999, executed by 2nd defendant in favour of the 1st defendant as fraudulent and null and void and not binding on the plaintiff and the 1st defendant was directed to hand over the vacant possession of the suit property to the plaintiff.

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4.Despite being aware of the said proceedings the respondent herein has proceeded to file a suit O.S.No.1091 of

2017 on the file of the II Additional District Munsif, Coimbatore. In the said suit the respondent has deliberately kept silent about the earlier suit and the decree that has been obtained by the revision petitioner and the respondent claims a right to the suit property based upon the very same documents which has been declared as null and void in the earlier proceedings.

5.The defendant/revision petitioner had entered appearance and has taken out the application for rejecting the plaint on the ground that there is no cause of action in the present suit. However, the learned Judge, proceeded to dismiss the said application on the ground that the present suit is filed for an injunction and in earlier suit, application for setting aside the ex parte decree is pending. In my opinion the learned Judge has totally been misdirected. Even assuming that application to setting aside the ex parte decree is filed, the cause of action in both the suits are the same. The respondent having filed the application to set aside the ex parte in O.S.No.856 of 2012 the

learned Judge ought to have declared that the present suit is one nothing but a forum shopping and ought not to have dismissed the said application. The same not having been done is a grave error on the part of the learned Judge.

The Civil Revision Petition is therefore allowed and the and the plaint in O.S.No.1091 of 2017 stands rejected. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

08.04.2019

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Index : Yes/No
Speaking order/non-speaking order

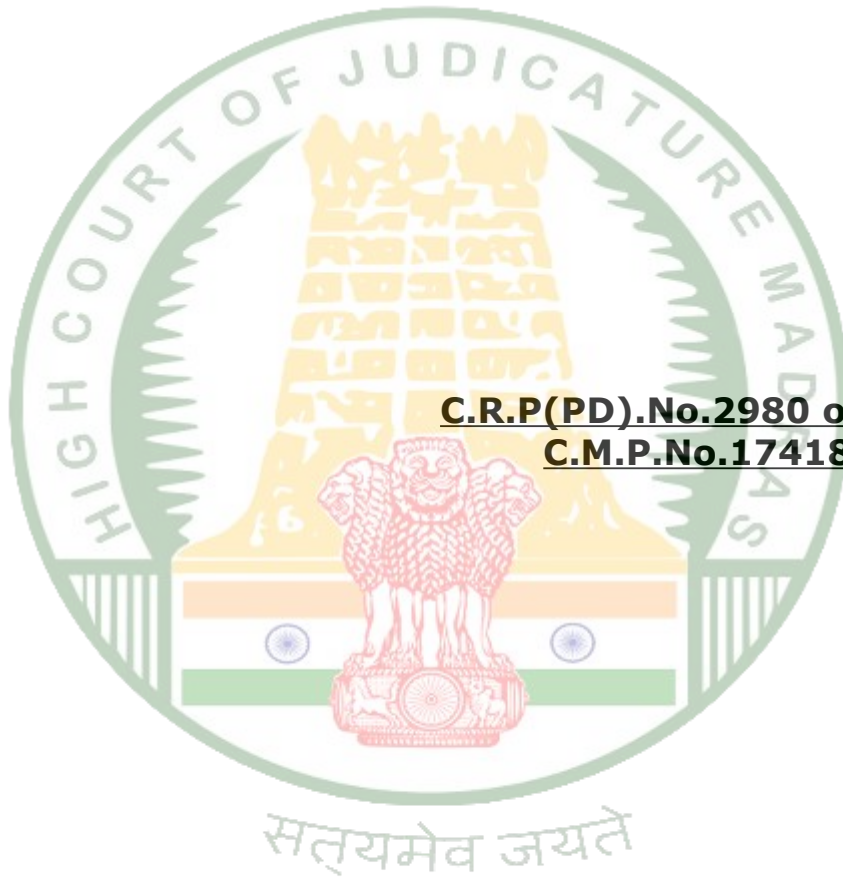
To

The II Additional District Munsif,
Coimbatore.

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P.T.ASHA, J.,

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