

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 15.12.2020]

[ORDERS PRONOUNCED ON : 30.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).Nos.2178 and 1551 of 2020
and
C.M.P.No.13710 of 2020

S.Prakash Chand Jain

...Petitioner in both C.R.Ps

.. Vs ..

1.Gopalji Agarwal
2. K.Arumugam

...Respondents in both C.R.Ps

PRAYER in C.R.P.(PD)No.2178 of 2020: Petition filed under Article 227 of the Constitution of India, to set aside the common order dated 01.11.2019 passed by the I Additional District Judge at Tiruvallur in I.A.No.2 of 2019 in O.S.No.87 of 2018.

PRAYER in C.R.P.(PD)No.1551 of 2020: Petition filed under Article 227 of the Constitution of India, to set aside the common order dated 01.11.2019 passed by the I Additional District Judge at Tiruvallur in I.A.No.3 of 2019 in O.S.No.87 of 2018.

For Petitioner : Mr.Mahendar Bhansali
in both C.R.Ps

ORDER

As both the C.R.Ps are arising out of the common order they are taken together.

2. The first respondent herein filed a suit in O.S.No.87/2018 on the file of the learned Principal District Judge, Tiruvallur, for execution of the Sale Deed based upon the Memorandum of Deposit of title deeds by the second respondent herein.

3. Written statement has been filed.

4. Pending suit, the first respondent herein, who is the plaintiff in the main suit, filed I.A.No.190/2018 under Order 39 Rule 1 C.P.C for injunction restraining the defendant in the main suit not to alienate and encumber the property pending disposal of the suit wherein status-quo

order has been passed. While things be so, the petitioner herein/third party has filed I.A.670 and 671/2018 wherein he has sought to implead himself as a second defendant in the main suit I.A.No.670/2018 and to implead himself as a second respondent in the injunction application (I.A.No.671/2018). Pending enquiry, these two Interlocutory Applications have transferred to the learned Additional District Judge, Tiruvallur and I.As were re-numbered as 1&2/19.

5. The case of the revision petitioner is that the petitioner has entered into a registered Sale Agreement with the second respondent/defendant on 22.05.2012. Towards part sale consideration, the petitioner has paid a sum of Rs.25,25,000/- in total and further he was also ready to perform his part of contract and to register the sale deed in his favour. At the time of entering into sale agreement, there was no other sale agreement entered into by the second respondent/defendant. There was only mortgage by deposit of title deeds and the second respondent assured the petitioner that the said mortgage would be cleared and the sale would be executed in his favour.

6. The learned counsel for the petitioner could contend that the first respondent herein has filed the above suit for execution of the sale deed by the second respondent herein/defendant in respect of the suit property based upon a time barred deposit of title deeds. However the sale agreement in favour of the petitioner herein is a registered one and hence, his right will be prejudiced and hence he wanted to get impleaded in both the injunction application as well as in the main suit.

7. The first respondent/plaintiff could contend that the second respondent/defendant had executed another sale deed in favour of the proposed defendant order to cheat the plaintiff in the suit. So also the learned counsel for the defendant in the suit has submitted that there is a collusion between the third party and the plaintiff.

8. The learned trial Judge has dismissed the petition by observing that in this case, "the only right based upon which the impleading application was filed is that a registered sale agreement was

executed by the second respondent/defendant in favour of the proposed party. In this context, it is pertinent to observe that a contract for sale of the immovable property is a contract that a sale of the said property was to take place on terms settled between the parties. It does not by itself create any interest in or charge over a such property. As per Section 54 of the Transfer of Property Act, the contract for sale of immovable property does not create any interest over such property. Hence, based upon the sale agreement executed in favour of the proposed party, proposed party cannot claim any right or title in the suit property. The only remedy available to the proposed party is to enforce the contract between himself and the second respondent/defendant. As far as the present case is concerned, the same has been filed by the first respondent/plaintiff as against the defendant for specific performance of the contract between them. It is not the case of the proposed party that he was a party to the contract in dispute in the present case. Hence, in order to determine the dispute on hand, the proposed party is neither a necessary party nor a proper party to the proceedings".

9. After going through the findings and also the pleadings in the plaint and the written statement filed in the main O.S.No.87/2018 and also the present case projected the plaintiff, I find that the finding rendered by the trial Court, as extracted supra does not suffer from any irregularity or illegality warranting interference in this case. I.A has been filed under Order 1 Rule 10 of C.P.C to add the petitioner as a proposed parties both in the Interlocutory Application and the main suit is well on the strengthen of the agreement of sale, alleged said to have been executed by the defendant in the main suit. As per Section 54 of the Transfer of Property Act, the agreement does not create any interest in or charge over the schedule of the property. It is always open to the petitioner herein to file independent Specific Performance if he wants the said agreement of sale. This suit is filed by the first respondent (plaintiff) for a Sale Deed in respect of the suit property based upon the documents Deposit of Title deeds executed by the defendant and hence, I find that for adjudication of the lis between the present plaintiff and the defendant, the proposed party is neither a necessary party nor a proper party to the proceedings.

10. In this view of the matter, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected C.M.P is closed.

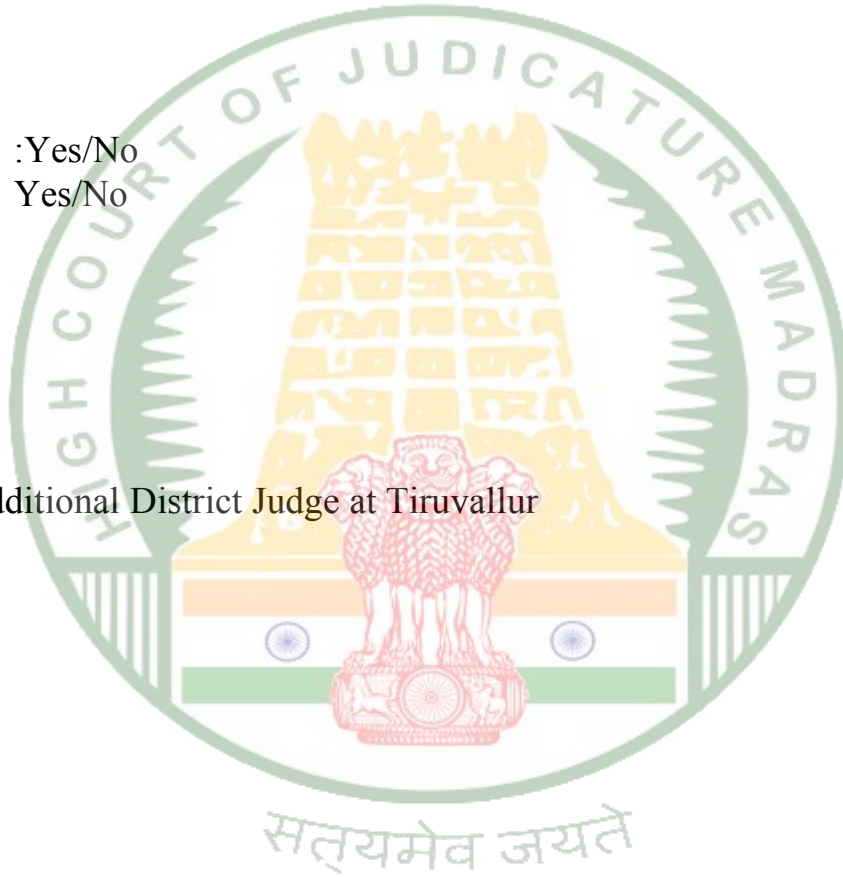
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To

The I Additional District Judge at Tiruvallur

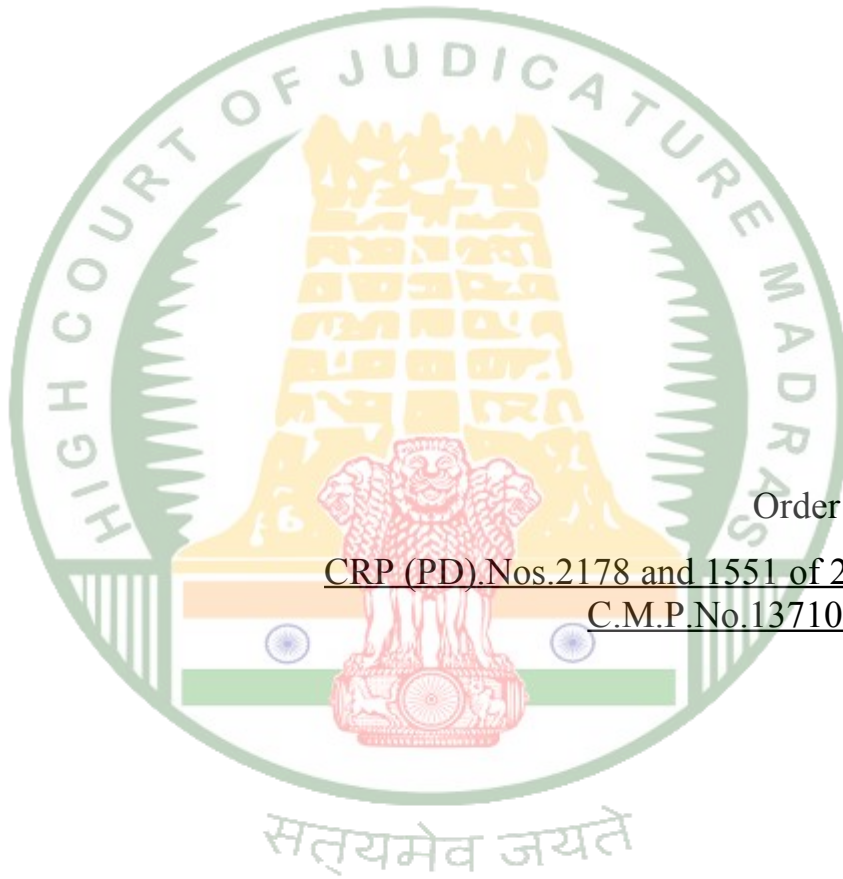


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RMT.TEEKAA RAMAN, J.

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Order made in
CRP (PD).Nos.2178 and 1551 of 2020 and
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