

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.15 of 2019
and
C.M.P.No.238 of 2019

1.Saroja
2.Thirumalai
3.Bhavani
4.Vasanthi
5.Bhuvaneswari

... Petitioners/Petitioners/Plaintiff

Vs

1.M.P.Sulochana
2.T.G.Gopinathan
3.Mythili

...Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned fair and decreetal order dated 11.08.2018 passed in I.A.No.1319 of 2017 in O.S.No.153 of 2009 on the file of the District Munsif Court, Chengalpattu.

For Petitioner .. Mr.V.M.Venkatramana

For R2 .. Mr.V.Chandra Prabu

For R1 and R3 .. No appearance.

ORDER

The present Civil Revision Petition has been filed by the plaintiffs in O.S.No.153 of 2009 which is now pending on the file of the District Munsif Court, Chengalpattu.

2.The said suit had been filed for a declaration that the plaintiffs are the absolute owner of the suit property and for consequential relief of permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs and also for a declaration that the Sale Deed dated 23.10.2008 said to have been executed by the 1st defendant in favour of the 2nd defendant as null and void and also for costs.

3.The 2nd defendant is the contesting defendant, as seen from the relief sought, in view of the fact that he has been the beneficiary of the Sale Deed dated 23.10.2008 which is sought to be set aside. Written statement has been filed by him. The issues have been framed. The parties had been invited to tender evidence and had adduced evidence.

They also marked documents. Their evidence had been tested during

cross-examination. Thereafter, the defendants were invited to tender evidence. DW-1 and DW-2 were examined on behalf of the 2nd defendant. Finally, DW-3 was examined. DW-3 filed his proof affidavit by way of chief examination. It would always be a better approach if an independent witness is examined orally rather than by filing a proof affidavit because an independent witness is expected to state facts to his knowledge. Anyway, proof affidavit had been filed and he has also been cross-examined. All those took place in the year 2017.

4.I do not want to go into deeply on the evidence of DW-3 since the plaintiffs had filed I.A.No.1319 of 2017 seeking permission to recall DW-3 after stating that cross-examination had been completed, on the ground that further questions will have to be put to him. That application came to be considered by the learned District Munsif, Chengalpet and by order dated 11.08.2018 the said application was dismissed. Questioning that particular order the plaintiffs had filed the present Civil Revision Petition.

5.Heard Mr.V.M.Venkatramana, learned counsel for the revision petitioners and Mr.V.Chandraprabu, learned counsel for the 2nd

respondent / 2nd defendant who was the contesting defendant in the trial court.

6.A perusal of the chief examination of DW-3 would indicate that he had been examined since he was a witness in a Power of Attorney document dated 24.05.1996. He was called to speak about such a fact undertaken by him in the year 2017.

7.I would rather confine myself to observing that the learned District Munsif, Chengalpet, may analyze the said evidence both in chief and cross-examination by taking into consideration the particular portion alone which a witness to a document can speak. The witness to a document can tender evidence primarily regarding witnessing the signatures affixed to the documents. If he were speak anything further, then those facts should be tested in cross-examination.

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8.I find that suggestions have also been put with respect to passing of consideration. The discretion is entirely with the learned District Munsif, Chengalpet to analyze the said evidence. The said evidence is only corroborative in nature to be taken in addition to the primary

evidence which had been already let in, presumably by the 2nd defendant. It is those statements which would decide whether the stand taken by the defendants can be appreciated or should suffer a finding in favour of the plaintiffs while determining the issues in the suit.

9. The learned District Munsif, Chengalpet, may therefore scan the evidence and take only the acceptable portions and thereafter pass a judgment in the issues of the suit. I am confident the learned District Munsif, Chengalpet, would discharge such obligation to his best efforts. No further directions are required. It would also work again the interest of the plaintiffs if the witness were to be recalled after a period of four years. Naturally he would fill the lacuna and if he were to be put to cross-examination, he would be thoroughly prepared on the nature of evidence to be adduced.

10. Therefore I do not think any useful purpose will be served by inviting DW-3 to gaze the witness box once again after a period of four years. The petitioner herein may move forward in the suit on the basis of the evidence adduced, primarily on the basis of their evidence to substantiate declaration of title, to substantiate possession and to

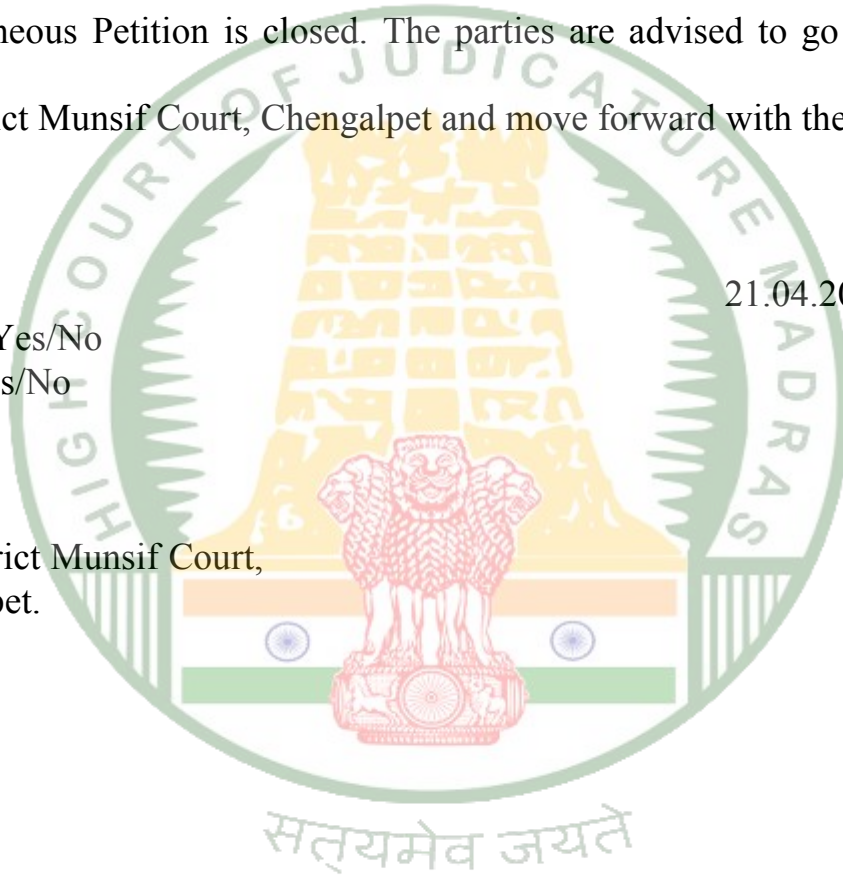
substantiate the reasons why the sale deed complained should be set aside.

11. With the above mentioned observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed. The parties are advised to go back to the District Munsif Court, Chengalpet and move forward with the suit.

21.04.2021

Internet: Yes/No
Index: Yes/No
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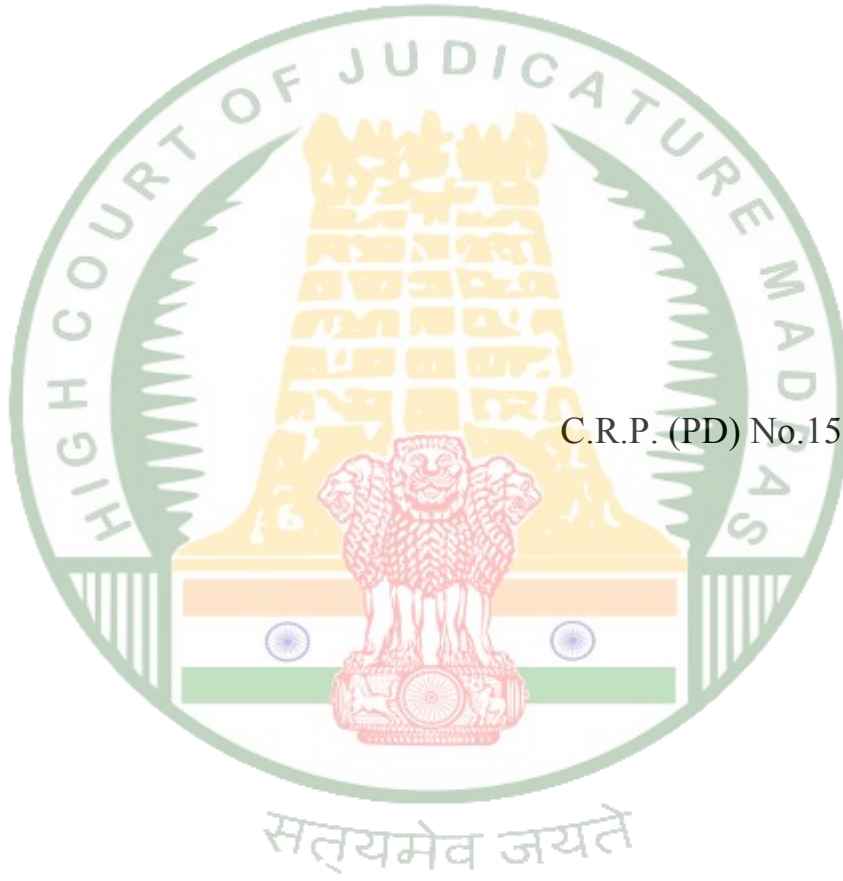
To
The District Munsif Court,
Chengalpet.



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C.V.KARTHIKEYAN,J.

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