

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.3628 of 2015
and M.P.No.1 of 2015

1. Kaliyamurthy (Deceased)

2. Sarathambal

3. Ramesh

4. Mahesh

5. Revathi

6. Rekha

7. Mahalakshmi

(Petitioners 2 to 7 are brought
on record as legal heirs of the
deceased sole petitioner vide
Court order dated 04.02.2021
made in C.M.P.No.1613 of
2021 in C.R.P.3628 of 2015)

... Petitioners

Vs.

Kuppusamy (Died)

1. Ramachandran

2. Mahavishnu

3. Vasanth

4. Dhanam Ammmal

5. Sakthivel

6. Thaiyalnayaki

7. Karthiga

(Respondents 4 to 7 were
remained exparte in the
Court below)

... Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside judgment and decree dated 17.02.2015 passed in I.A.No.438 of 2014 in O.S.No.16 of 2009, on the file of the Court of the District Munsif-cum-Judicial Magistrate, Portonova and allow the said I.A. by allowing this Civil Revision Petition.

For Petitioner : Mr.A.Muthukumar

For Respondents

For R1 to R3 : No appearance

For R4 to R7 : Dispensed with

ORDER

The Civil Revision Petition is directed as against the judgment and decree dated 17.02.2015 passed by the learned District Munsif-cum-Judicial Magistrate, Portonova in I.A.No.438 of 2014 in O.S.No.16 of 2009, thereby dismissing the petition filed by the petitioner seeking permission to receive the reply statement.

2. The first petitioner is the plaintiff and he filed suit in O.S.No.16 of 2009 for specific performance as against the respondents herein. The respondents filed their written statement stating that after demise of the first defendant viz., Kuppusamy, the second respondent herein purchased the second item of the suit property on 02.07.2008 from the legal representatives of the deceased first defendant viz., the six and seventh respondents herein. The third respondent herein purchased the first item of the suit property by the sale deed dated 02.07.2008 from the seventh and eighth respondents herein. They further stated that the first petitioner originally filed suit in O.S.No.32 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Parangipettai as against the deceased first defendant for permanent injunction. The said suit was dismissed in the year 2008, and thereafter, the present suit has been laid.

3. To deny the said allegations, the first petitioner filed this petition in I.A.No.438 of 2014 to receive the reply statement to the written statement filed by the respondents herein. The trial Court dismissed the said

petition, as against which the present Civil Revision Petition.

4. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioners. Though notice served to the respondents and their name printed in the cause list, no one is appeared on behalf of the respondents either by person or through counsel.

5. On perusal of the reply statement, the first petitioner averd that the first defendant was died on 20.11.2007 itself. Therefore, the alleged sale deeds dated 02.07.2008, executed in favour of the second and third respondents herein by the respondents 6 & 7 are sham and nominal and they are not bonafide purchasers. Further stated that the first suit in O.S.No.32 of 2008 filed for permanent injunction as against the deceased first defendant, and the same was dismissed with liberty to file fresh suit. Therefore, the avernments made in the reply statements are no way caused prejudice to the respondents and it would not change the nature of the suit and cause of action of the suit.

6. In view of the above discussions, the order passed by the Court

below is perverse and liable to be set aside. Accordingly the order dated 17.02.2015 passed by the learned District Munsif-cum-Judicial Magistrate, Portonova in I.A.No.438 of 2014 in O.S.No.16 of 2009, is hereby set aside. The petitioners are permitted to file their reply statement to the written statement filed by the respondents herein.

7. Accordingly, the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

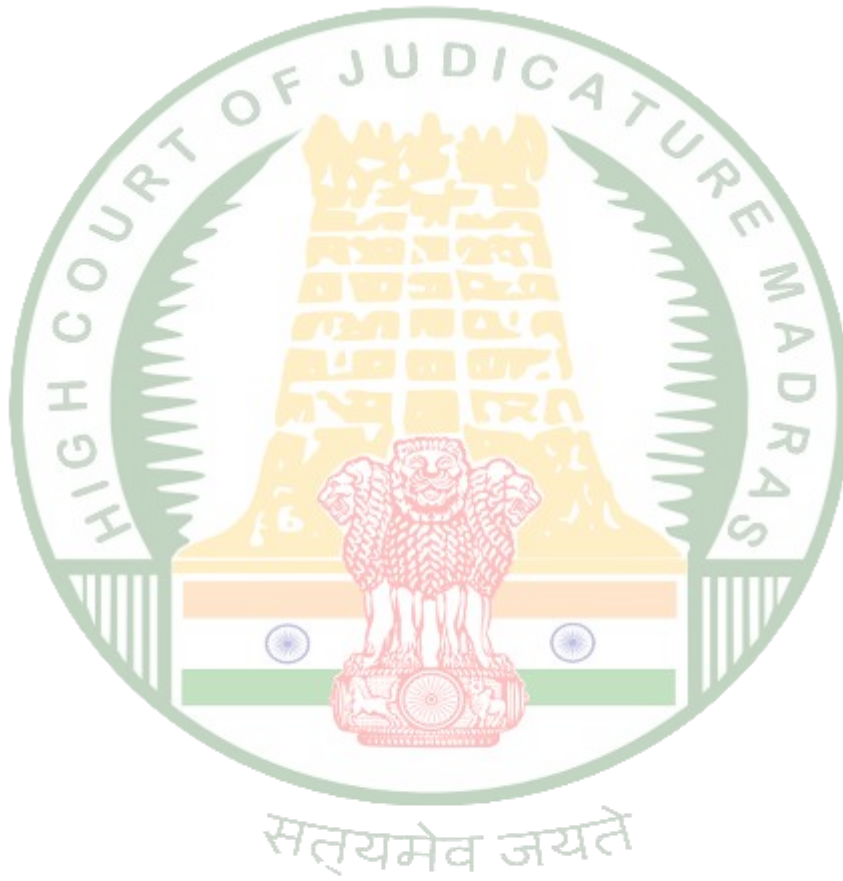
rts

To

1. The District Munsif-cum-Judicial Magistrate,
Portonova.

2. The Section Officer,
V.R. Section,
Madras High Court,

Chennai.

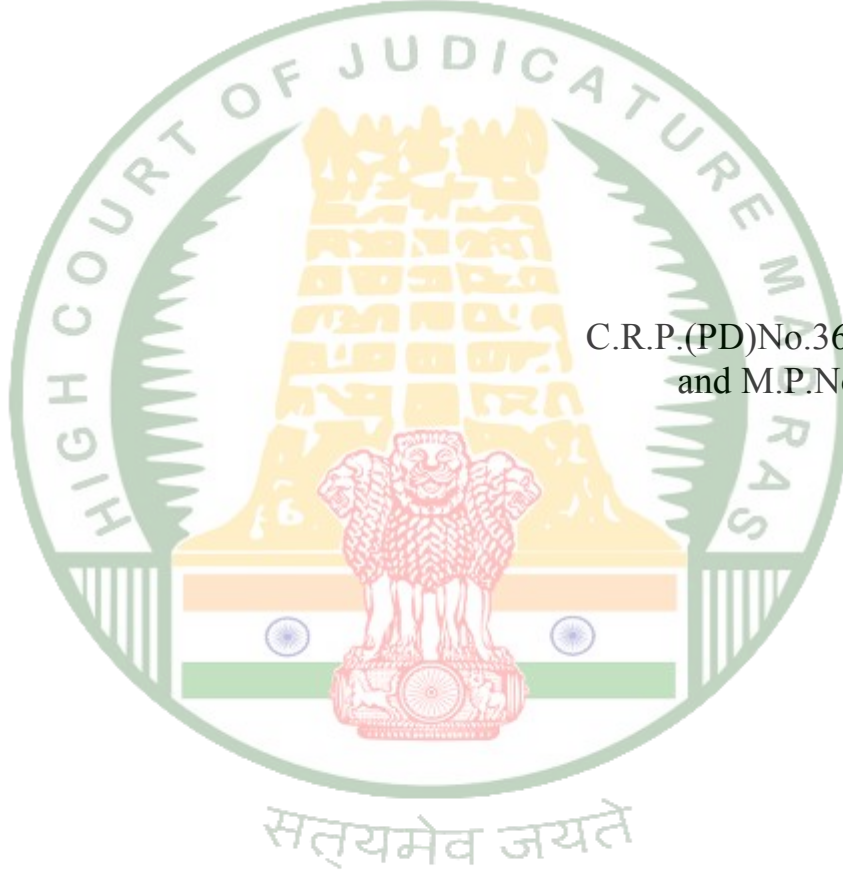


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