

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.558 of 2021
and
C.M.P.No.4763 of 2021

1. V. Dharmalingam,
2 D. Rajasekar,
3. D. Brinda, ... Petitioners/Respondents 1,3,4/
Respondents 1,3,4/Defendants

Vs.

1. D. Gayathri, ...1st Respondent/Appellant/Petitioner
/Plaintiff
2.D. Rajalingam, ...2nd Respondent/2nd
Respondent/Respondent/Defendant 2

Prayer: This Civil Revision Petitions filed under Article 227 of the Constitution of India seeking for to set aside the fair and decreetal order dated 03.01.2020 in C.M.A. No.10 of 2017 on the file of the Principal District Judge, Kancheepuram at Chengalpattu.

For Petitioners ... Mr.M. Thangadurai

For Respondents ... No appearance

O R D E R

This Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking for to set aside the fair and decreetal order dated 03.01.2020 in C.M.A. No.10 of 2017 on the file of the Principal District Judge, Kancheepuram at Chengalpattu.

2. The case of the petitioners is that at the first instance, the 1st respondent/plaintiff has originally filed the

suit in O.S. No.224 of 2005 before the Principal District Court, Chengalpattu and subsequently, the same was transferred to Sub-Court, Chengalpattu. As the plaintiff had not turned up during the hearings, the said suit was dismissed for default on 27.10.2010. Subsequently, the suit was restored on 06.01.2012 by order dated 06.01.2012 in I.A. No.277 of 2010 and transferred to Sub-Court, Tambaram and renumbered as in O.S.No.5 of 2012. Pending Trial, since the plaintiff had once again not turned up before the Trial Court, the suit was once again dismissed for default on 06.02.2013. While being so, the plaintiff has filed I.A. No.574 of 2013 under Order 9 Rule 9 to restore the suit for adjudication of the same on merits. The same was dismissed on 27.01.2015. Being aggrieved by the aforesaid order, the plaintiff has filed the Civil Miscellaneous Appeal in CMA No.10 of 2017 before the Principal District Court, Kancheepuram, Chengalpattu. The same was allowed by Judgment dated 03.01.2020 on condition to pay a sum of Rs.10,000/- to the respondents therein. Aggrieved by the aforesaid Judgment, the defendants/petitioners herein have filed the present Civil Revision Petition to set aside the Judgment dated 03.01.2020 passed by the lower appeal Court.

3.The learned counsel for the petitioners would submit that the 1st respondent/plaintiff originally filed the suit in O.S. No.224 of 2005 on the file of the District Court, Chengalpattu in the year 2005 and the same has been transferred and renumbered as O.S.No.5 of 2012 on the file of the Sub-Court, Tambaram wherein the said suit was dismissed for default for two occasions, since there was no representation on the side of the plaintiff/1st respondent herein. Even though the plaintiff/1st respondent was given one more opportunity to contest the suit after the suit was dismissed for default in the first instance, if the plaintiff/1st respondent herein was a bonafide purchaser, she should have attended the hearings to prove her side and however once again failed to appear before the Trial Court during the hearings. Hence, for the second occasion, the Trial Court dismissed the suit for default. Under such circumstances, the plaintiff/1st respondent again has filed CMA No.10 of 2007 on the file of the Principal District Judge, Kancheepuram, Chengalpattu, to restore the dismissal suit with the malafide intention to keep the said suit alive by dragging the petitioners into the Court and even knowing the 1st petitioner is old aged and suffered aged related ailments. Despite the plaintiff/1st respondent was granted opportunities for two times, the plaintiff/1st respondent is not at all diligent in conducting the case by appearing before the Trial Court and failed to use it. After dismissal of the suit for specific performance, the plaintiff has filed application to restore the suit stating the reasons in the affidavit that as the vehicle travelled by the

plaintiff and her counsel was got repaired and they did not find any vehicle to reach the Court during the hearing day and hence they could not attend the hearing. As it was not proved by them, the Trial Court rightly dismissed the application. However, without considering the conduct and the attitude of the plaintiff/1st respondent herein, the lower appeal Court has allowed by order dated 03.01.2020 to restore the said suit to conduct the trial on merit when any valid reasons has not been given and the same was not proved by the plaintiff/1st respondent herein for not attending the hearings for two occasions before the Trial Court. In the aforesaid order, the lower appellate Court went beyond the scope of the appeal and discussed the validity of the sale agreement. Hence, the order dated 03.01.2020 passed by the Lower appellate Court is not sustainable and liable to be set aside.

4. Heard, the learned counsel for the petitioners and perused the material available on record.

5. On perusal of the record, it is admitted fact that the sale agreement was executed between the 1st petitioner and the 1st respondent fix the rate of the suit property and accordingly, a part of the amount of sale proceeds has been paid to the 1st defendant/1st petitioner herein. The same was admitted by the defendants 1 and 3 / petitioners land 2 herein jointly in their written statement in the suit proceedings. The suit has been particularly filed for specific performance having the evidence of unregistered sale agreement entered into between the 1st petitioner and 1st respondent herein and payment of an advance amount of the sale proceedings. The Trial Court has dismissed the suit only for default since the absence of the plaintiff and his counsel during the hearings and not on merit. Under these circumstances, having considered the fact that, till the suit filed by the plaintiff/1st respondent herein has not been decided on merit, the dispute between the parties would not be settled. Hence, this Court directs the Trial Court to complete the Trial as expeditiously as possible and dispose of the case in accordance with the law on or before 30.10.2021. The parties concerned in the suit are directed to attend the hearings without fail as scheduled by the Trial Court to conduct the Trial day today basis and co-operate with the Court proceedings without taking any unnecessary adjournments since the suit filed in the year 2005 is prolonged till now due to lethargic on the side of the plaintiff/1st respondent. If the plaintiff/1st respondent fails to appear before the Trial Court on the hearing date and co-operate with the Court proceedings, she shall not be allowed once again to contest the case in the suit in O.S. No.5 of 2012 seeking for the relief of specific

performance since the suit filed by her was dismissed for default for two times due to her lethargic attitude and carelessness to contest the suit in time.

6. In the result, the Civil Revision petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

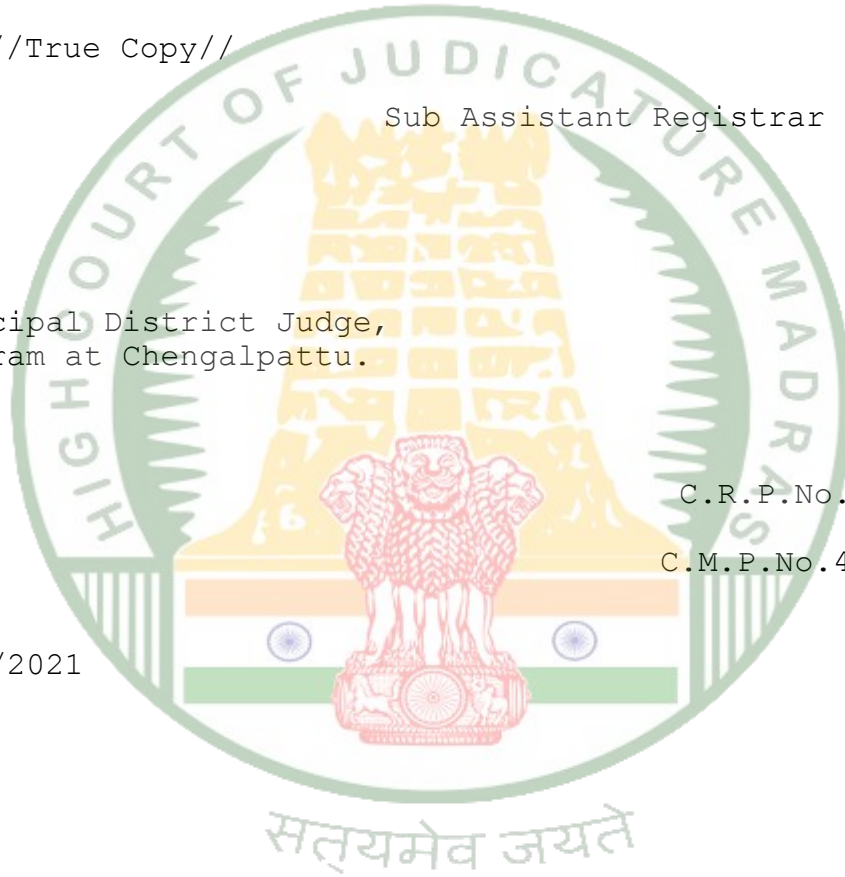
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To:

The Principal District Judge,
Kancheepuram at Chengalpattu.

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and
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