

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

CRP.NPD.No. 3412 of 2016

and

CMP.No.17361 of 2016

M.Pushparaj

... Petitioner

Vs.

K.Kanthiah

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the judgement and decree dated 05.01.2016 passed in C.M.P.No.1495 of 2013 in A.S.No.535 of 2010 on the file of I Additional City Civil Court, Chennai and allow the above CRP.

For Petitioner : No Appearance

For Respondent : Mr.S.Balaji

ORDER

This Civil Revision Petition is directed as against the judgement and decree passed in C.M.P.No.1495 of 2013 in A.S.No.535 of 2010 dated 05.01.2016 on the file of the I Additional City Civil Court, Chennai.

2. The learned counsel for the respondents submitted that as against the judgement and decree passed in the Appeal Suit in A.S.No.535 of 2010, the petitioner herein filed CMA.No.1540 of 2016 and the same was allowed. The First Appellate Court allowed the Appeal Suit and also allowed the application in CMP.No.1495 of 2013 filed to send the suit promissory note for handwriting expert's opinion. The First Appellate Court remitted back the matter to the trial Court and the trial Court was directed to send the suit promissory note with admitted signatures for getting handwriting expert's opinion.

3. The judgment passed by this Court in the said C.M.A.No.1540 of 2016, is as follows:-

“8. The Lower Appellate Court should not have disposed of the petition in CMP.No.1495 of 2013 along with the appeal. The Lower Appellate Court should have taken up the said petition separately and disposed of on merits and in accordance with law. That apart, merely because the petition in C.M.P.No.1495 of 2013 has been allowed, that is not a ground for setting aside the judgment and decree of the trial Court. The Lower

Appellate Court itself could have obtained the report from the Handwriting Expert and disposed of the appeal on merits and in accordance with law. I do not find any ground for remanding the matter to the trial Court.

9. It is brought to the notice of this Court that the appellant/defendant has also filed a Civil Revision Petition in C.R.P(NPD) No.3412 of 2016 as against the order passed in C.M.P.No.1495 of 2013 and the same is pending.

10. In these circumstances, the judgment and decree passed in A.S.No.535 of 2010 are set aside. The matter is remanded to the I Additional Judge, City Civil Court, Chennai for fresh consideration. The Civil Miscellaneous Appeal is allowed.”

4. In the Civil Miscellaneous Appeal in CMA.No.1540 of 2016, this Court set aside the judgment and decree passed in the Appeal Suit and directed the First Appellate Court itself to decide the Appeal Suit afresh. In view of the order passed by this Court in CMA.No.15400 of 2016, the order passed in CMP.No.1495 of 2013 is also hereby set aside and the First Appellate Court is directed to dispose of CMP.No.1495 of 2013 afresh in accordance with law.

G.K.ILANTHIRAIYAN,J.

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5. In view of the above discussion, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The I Additional City Civil Court, Chennai.



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