

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2204 of 2019
and C.M.P. No.14302 of 2019

1.Munirathinam
2.Ramesh

Petitioners /
Defendants

versus

L.Pandiyan

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.12.2018 made in I.A.No.256 of 2017 in O.S.No.137 of 2014 on the file of the learned District Munsif, Katpadi, Vellore District and allow the above Civil Revision Petition.

For Petitioners : Mr.Ravichandran Sundaresan

For Respondent : Mr.M.Jaisingh

ORDER

This Civil Revision Petition is filed, challenging the order dated 05.12.2018 passed by the learned District Munsif, Katpadi, Vellore District, in I.A.No.256 of 2017 in O.S.No.137 of 2014.

2. The learned counsel for the petitioners submitted that, the respondent filed the suit in O.S.No.137 of 2014, seeking the relief of declaration of title in respect of the suit property and for the permanent injunction. The petitioners filed written statement and contested the suit. The respondent has not properly conducted the case and allowed the case for dismissed for default on 08.03.2016. He has filed I.A.No.256 of 2017 under Section 5 of the Limitation Act for condoning the delay of 450 days in filing the petition to restore the suit, which was dismissed for default. He further submitted that the affidavit filed in support of the petition, it was just said that the respondent was suffering from viral fever and due to illness, he could not meet his Advocate. Though this petition was contested by the petitioners, the learned District Munsif has allowed the petition on costs. Challenging the order allowing I.A.No.256 of 2017, this Civil Revision Petition is preferred. He further submitted that this is the second round of

litigation. For the same property, the respondent's father filed O.S.No.161 of 1999 and allowed it to be dismissed for default. Now, this suit was filed by the respondent, which is nothing but abuse of process of law and harassment to the petitioners.

3. In response, the learned counsel for the respondent submitted that, the respondent filed the suit on the basis of the registered Sale Deed executed by the petitioners on 04.08.2011. In the written statement filed by the first petitioner, he admitted the execution of Sale Deed on 04.08.2011, of course he claims that the Sale Deed was executed, when the first petitioner was not in his senses. However, these facts have to be decided only in the course of trial. He prayed for giving an opportunity to the petitioner, to present his case.

4. Considered the rival submissions and perused the records.

5. It is seen from the averments made in the plaint and the written statement that, the respondent filed the suit for declaration and injunction on the basis of the registered Sale Deed dated 04.08.2011 said to have been executed by first petitioner. The written statement shows that, the first petitioner admitted the execution of Sale Deed dated 04.08.2011 but claimed that at the time of the execution of Sale Deed, he was not well and he was unconscious and taking advantage of this lack of senses, the Sale Deed dated 04.08.2011 had been executed using forgery. He also denied the receipt of consideration.

6. Coming to the petition filed for condoning delay in filing the restoration petition, as rightly pointed out by the learned counsel for the petitioners that, except vague allegation that, the respondent was suffering from viral fever, therefore, he was not able to attend the Court on 08.03.2016 and meet his Advocate, there are no specific details with regard to the reasons for condoning the delay of 450 days in filing the restoration petition. However, without going to merits of the reason and considering the fact that the suit was filed for declaration of title and consequential relief of injunction on the basis of the Sale Deed said to have been executed by the

first petitioner, this Court is of the considered view that, the respondent has to be given an opportunity to present the case, of course, on some conditions.

7. Though the learned District Munsif has ordered to pay Rs.2,000/- as costs, this Court finds that, this costs, is not enough. Therefore, the respondent, is directed to pay a sum of Rs.25,000/- [Rupees Twenty Five Thousand only] as costs to the petitioners. The learned District Munsif, Katpadi, Vellore District, is also directed to dispose the case in O.S.No.137 of 2014, on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three (3) months from the date of receipt of a copy of this order. The suit may be restored only on payment of costs of Rs.25,000/- to the petitioners.

8. Accordingly, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

WEB COPY

06.10.2021

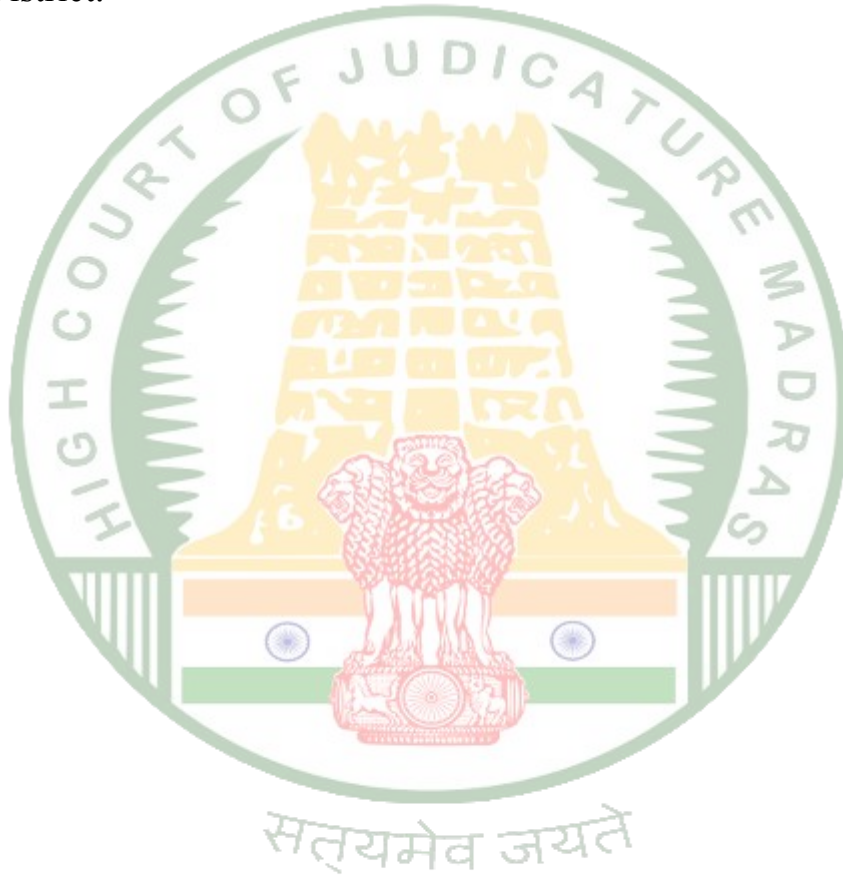
Speaking order / Non-speaking order

Index : Yes / No

psa / sri

To

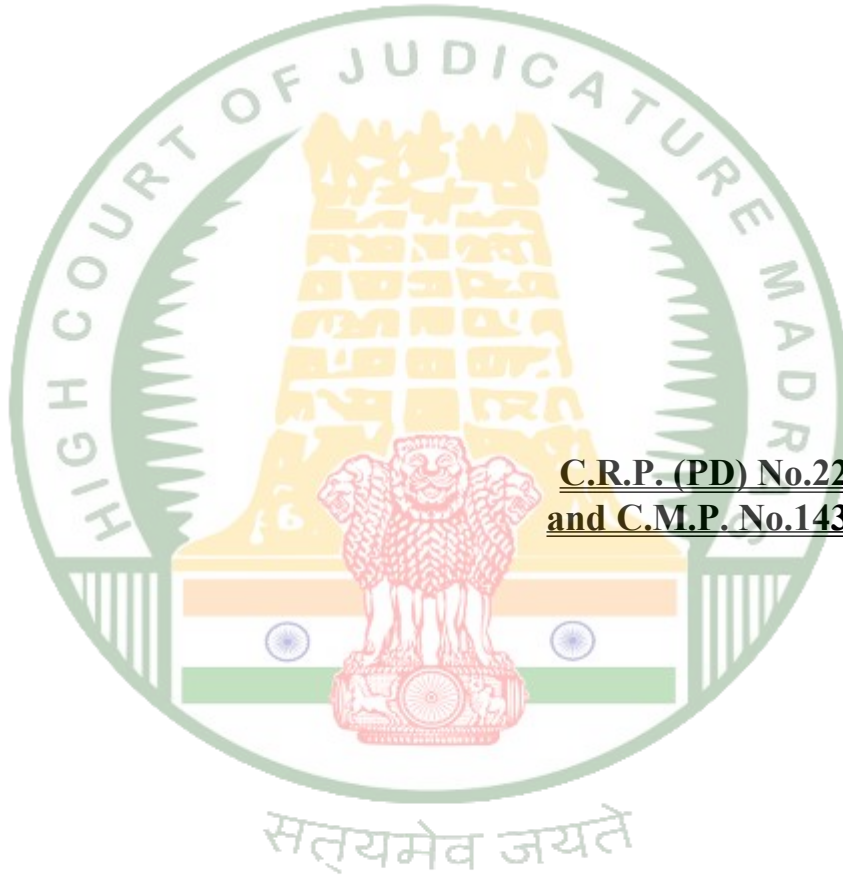
The District Munsif,
Katpadi,
Vellore District.



WEB COPY

G.CHANDRASEKHARAN, J.

psa / sri



C.R.P. (PD) No.2204 of 2019
and C.M.P. No.14302 of 2019

WEB COPY

06.10.2021