

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).Nos.2320 to 2322 of 2019

and

C.M.P.Nos.15152, 15157 &15156 of 2019

1.G.Vinayagamurugan

2.Kumaran

... Petitioners in
CRP.NPD.No.2320/2019

1.G.Vinayagamurugan

2.Gayathri

... Petitioners in
CRP.NPD.Nos.2321 & 2322/2019

1.Sudhakaran

2.Gunasekaran

3.Valarmathy

.... Respondents in
CRP.NPD.No.2320/2019

1.Venkatesan

2.Gunasekaran

3.Valarmathy

.... Respondents in
CRP.NPD.No.2322/2019

1.Malarvannan

2.Gunasekaran

3.Valarmathy

.... Respondents in
CRP.NPD.No.2321/2019

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to call for the records relating to the order and decretal order dated 27.04.2019 made in I.A.Nos.845, 849 & 853 of 2018 in A.S.No.23, 24 & 25 of 2017 on the file of the Hon'ble II Additional District Judge, Puducherry and set aside the same.

For Petitioners

In all petitions : Mr.M.Sundargopal

For Respondents

In all petitions : Mr.S.Sudarshan [for R1]

COMMON ORDER

These three revision petitions have been filed by the defendants in three appeals in A.S.No.23 of 2017, A.S.No.24 of 2017 and A.S.No.25 of 2017 which are all pending on the file of II Additional District Court, Puducherry.

2. A small examination of the facts is required. Three suits were originally filed, namely in O.S.No.138 of 2003, O.S.No.424 of 2003 and O.S.No.8 of 2004. The plaintiff in O.S.No.138 of 2003 is Mr.P.Sudhakaran. He had instituted the suit on the basis of an agreement seeking specific performance to convey the 2nd floor of the property at Kamaraj Nagar, Saram Revenue Village, Uzhavar Karai Municipality in Puducherry in re-Survey No.336/2. In O.S.No.424 of 2003, the plaintiff is Mr.P.Venkadesan, who had instituted the suit seeking specific performance of the agreement to convey the ground floor of the said building. In O.S.No.8 of 2004, the plaintiff is Mr.D.Malarvannan, who had instituted the suit seeking specific performance of the agreement to convey the 1st floor. In effect, the three suits have been filed seeking specific performance of three separate agreements, by which, it was agreed to convey the ground floor, 1st floor and 2nd floor of the said building.

3. The parties went to trial, and the suits were decreed.

4. Thereafter, A.S.No.23 of 2017 had been filed questioning the judgment in O.S.No.138 of 2003. Similarly A.S.No.24 of 2017 had been filed questioning the judgment in O.S.No.424 of 2003 and A.S.No.25 of 2017 had been filed questioning the judgment in O.S.No.8 of 2004.

5. All the three First Appeals are pending in the Court of the II Additional District Judge, Puducherry.

6. At that stage, the Interlocutory Applications were filed in all the three First Appeals seeking permission for appointment of an Advocate Commissioner to measure the 3rd floor of the said building. It is to be mentioned that the agreements were only to convey the ground floor, 1st floor and 2nd floor. In the schedule given in all the three agreements, it had been specifically stated that the building consists of three floors. There is no agreement with respect to conveying the 3rd floor.

7. The applications seeking appointment of an Advocate Commissioner to note down the physical features of the 3rd floor had been dismissed by the learned II Additional District Judge, Puducherry, leading to filing of the instant three Civil Revision Petitions.

8. Since arguments are to be advanced in the First Appeals, it may not be appropriate on the part of this Court to examine the merits of the case. However, let me limit myself to state that the building has a ground floor, 1st floor, 2nd floor and 3rd floor. Agreements of sale have been entered into only

with respect to ground floor, 1st floor and 2nd floor. The respondents in the First appeals / plaintiffs in the three suits can claim right only with respect to the ground floor, 1st floor and 2nd floor and cannot claim any right over the 3rd floor. That aspect is also affirmed by Mr.S.Sudarshan, learned counsel for the 1st respondent in all the three revision petitions. This position would clarify the apprehension of the present petitioners that under the guise of obtaining a decree with respect of ground floor, 1st floor and 2nd floor, the 1st respondent may also take control of the 3rd floor. The 3rd floor, to repeat, is not the subject matter of any one of the three agreements of sale which are now under consideration in the three First Appeals, now pending before the II Additional Family Court at Puducherry.

9. I am confident that this clarification would satisfy the present petitioners before this Court. No further orders are required. The parties are advised to go back to the II Additional District Court, Puducherry and advance arguments in the respective First Appeals which are pending there.

10. The order under question is upheld, but the observation above are made for clarification of the said fact for the benefit of the revision petitioners.

11. Accordingly, these Civil Revision Petitions are disposed of. No order as to costs. Consequently, connected miscellaneous petitions are closed.

09.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The II Additional District Judge,
Puducherry.

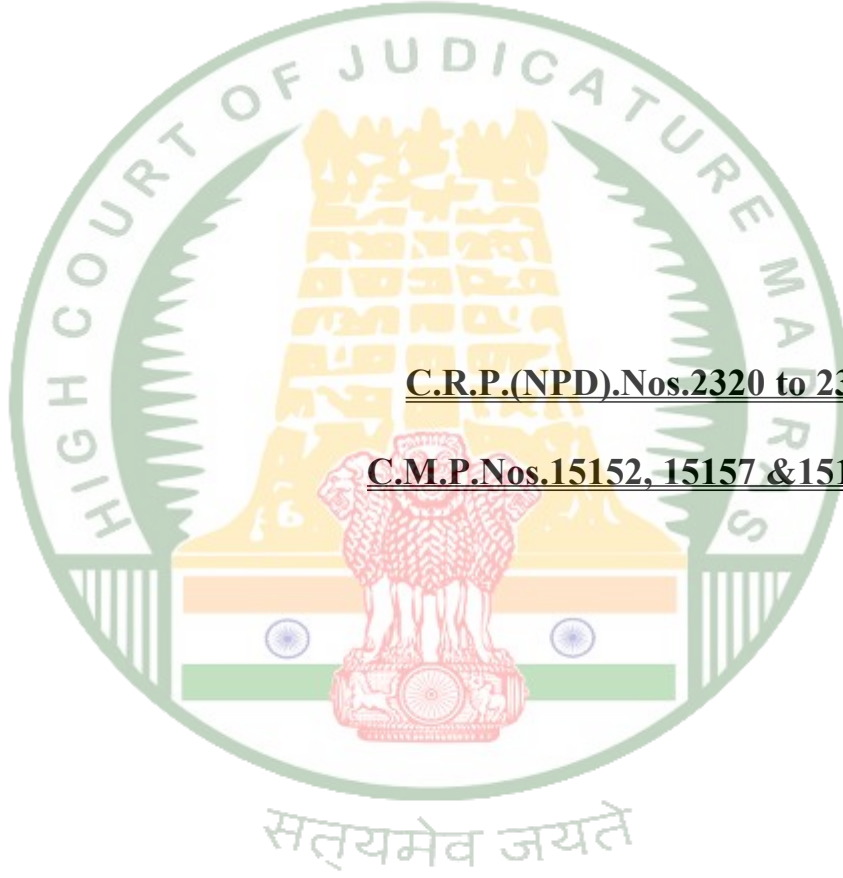


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