

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 17.12.2020]

[ORDERS PRONOUNCED ON : 18.01.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.2198 of 2020

and

C.M.P.No.13883 of 2020

S.Ajesh Ragav

....Petitioner

.. Vs ..

1. C.Manoharan

2. G.R.Thangavelu

3.A.Dhandapani

4.M.Jayaseelan

5.I.Samuel

...Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.02.2020 in I.A.No.2 of 2019 in O.S.No.659 of 2011, on the file of V Additional District Judge, Coimbatore.

For Petitioner

: Mr.S.T.Bharath Gowtham

ORDER

The third defendant is the revision petitioner herein.

2. The first respondent filed a suit for Specific Performance of the suit sale agreement filed.

3. While, the first defendant was remained ex-parte and the others are contesting the suit.

4. When the matter was posted for judgment, the newly added the third defendant has filed I.A.No.1 of 2019 under Section 151 of C.P.C to re-open the third defendant side for further proceedings in the above suit O.S.No.659 of 2019 and I.A.No.2 of 2019 is filed under Order 18 Rule 17 read with 151 of C.P.C to re-call P.W.1, P.W.2 and D.W.1 for cross-examination. The said application was partly allowed to the limited extent of submission of the oral argument and partly disallowed for recalling the P.W.1, P.W.2 and D.W.1 and hence, the present Civil Revision Petition.

5. Heard the learned counsel for the petitioner.

6. After perusing the counter filed by the contesting the plaintiff before the trial Court and also the order passed by the learned V

Additional District Judge, Coimbatore for partly allowing the I.A.No.1 of 2009 to hear the argument and dismissed the I.A.No.2 of 2009. The learned District Judge has observed that on careful examination of the facts of the case, this is a case of the year 2011. It shows that at every stage the petitioner was not prompt in prosecuting his defence and had been lethargic in conducting the case. P.W.1 and P.W.2 were examined very long back in the year 2014, and they have been cross examined by this petitioner in length. The cross examination of D.W.1 was closed 28.07.2017 due to non-appearance of this petitioner/D3 despite several chances. Having slept over the same for two years, when the case stand posted for judgment, these petitions are filed. Further, the reason given by the petitioner is that he was impleaded as party 2nd defendant in O.S.No.197/2019 (previously O.S.No.846/2012) and the suit against him is dismissed for default, hence he wants an opportunity to contest the same by recalling the witnesses. As the suit as against this petitioner already dismissed the judgment and decree passed in O.S.No.197/2019 will no way bind this petitioner and no relief can be granted against this petitioner in O.S.No.197/2019. Further, O.S.No.197/2019 is not jointly tried along with this case. Thus, the reasons given by this petitioner are

not tenable for invoking the provisions under Order 18 Rule 17 C.P.C and also rendered the finding that on the date when the 2nd defendant arguments was heard, this petitioner has not made any representation or come forward to argue his case, so this Court has posted the matter for judgment.

7. Hence, came to the conclusion that the reasons given by the petitioner for re-opening and to re-call P.W.1, P.W.2 and D.W. are not sustainable as the suit in O.S.No.197/2019 (previously O.S.No.846 of 2012) against him stand dismissed for default and he cannot be permitted to contest the suit, and there is no need to re-call the witnesses to be cross-examined with respect to that suit. However, as it is contended that this petitioner side arguments was not heard, in the interest of justice, to give a fair opportunity, this Court is inclined to re-open the case for the limited purpose of permitting the petitioner/D3 to submit either his oral or written arguments on a fixed date, failing which to take up the matter for judgment.

8. Thereby, I.A.No.1 of 2009 to re-open the defendant's side for argument is allowed. However, to re-call the P.W.1, P.W.2 and D.W.1, has sought for in I.A.No.2 of 2009 was dismissed.

9. After going through the recording of matrix of the check history of the case, as extracted supra and after going through the various stages of the suit and attitude of the petitioner herein established.

10. When the matter is posted for judgment, I find that the observation of the finding and the conclusion of the trial Court as extracted supra does not warrant any interference.

11. In this view of the matter, this Civil Revision Petition is dismissed and the order passed by the learned V Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.659 of 2011, are confirmed. No costs. Consequently, connected C.M.P is closed.

18.01.2021

Internet :Yes
nvi

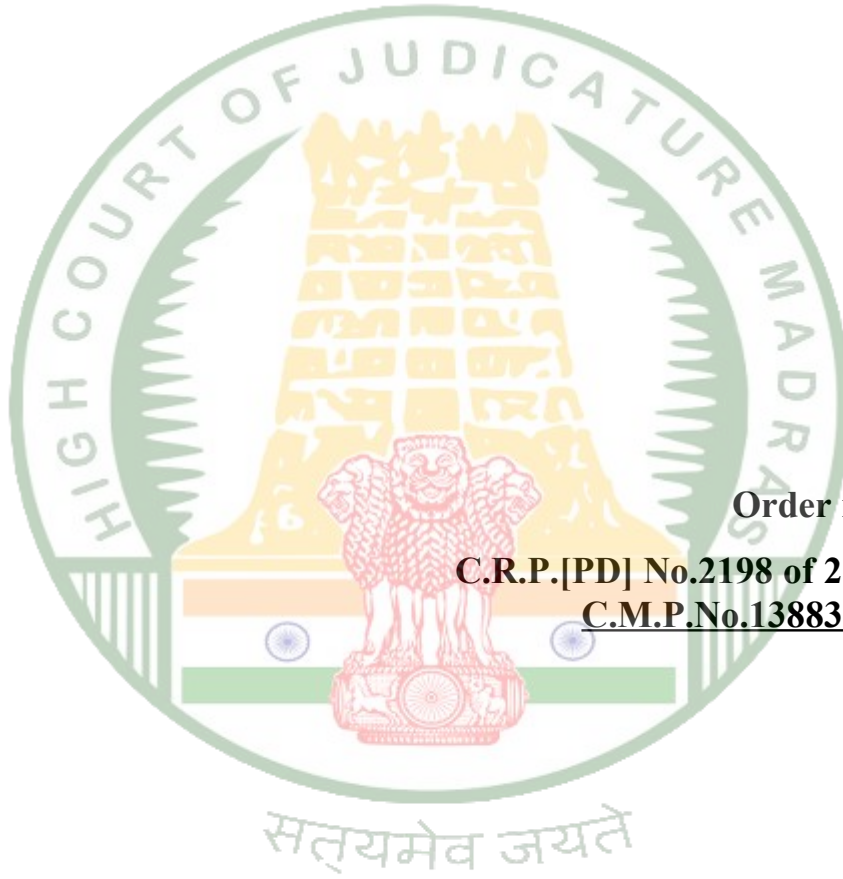
To

The V Additional District Judge, Coimbatore.

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RMT.TEEKAA RAMAN, J.

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Order made in
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