

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1285 of 2017
and C.M.P.No.5999 of 2017

Velmurugan

.. Petitioner

Vs.

Arulmighu Chokkanathaswami
Venkatesaperumal Devasthanam
represented by its Trustee
Balasubramania Mudaliar
East street, Naduveerapattu Village and Post
Cuddalore Taluk and District.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.03.2017 made in I.A.No.144 of 2017 in O.S.No.19 of 2013 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.Balamurugane

For Respondent : Mr.R.Gururaj

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 09.03.2017 made in I.A.No.144 of 2017 in O.S.No.19 of 2013 on the file of the Principal District Munsif Court, Cuddalore.

2.The petitioner is plaintiff and respondent is defendant in O.S.No.19 of 2013 on the file of the Principal District Munsif Court, Cuddalore. The petitioner filed the said suit for declaration and injunction. The respondent filed written statement and is contesting the suit. The petitioner filed two applications in I.A.No.143 of 2017 under Section 151 of C.P.C. to re-open the case and I.A.No.144 of 2017 under Order XVIII Rule 17 of C.P.C. to re-open and re-call P.W.1 for further examination of P.W.1 for marking document.

3.According to the petitioner, he was under the impression that unregistered sale deed dated 22.02.1997 was marked on the side of the petitioner after payment of stamp duty and penalty. By inadvertence, the

said document was not marked. Unless the said document is marked, the petitioner will be put to irreparable loss and hardship.

4.The respondent filed counter affidavit and stated that the petitioner filed proof affidavit on 02.08.2013. The document now sought to be marked being an unstamped and unregistered document, the learned Judge directed the petitioner to pay the stamp duty and penalty. The petitioner did not pay the stamp duty and penalty for about three years. On 10.03.2016, arguments were heard with regard to marking of document. The learned Judge by the order dated 24.03.2016, rejected the request of the petitioner and held that document cannot be marked. The petitioner did not challenge the said order. In the earlier suit O.S.No.383 of 2000 also, the same request of the petitioner was rejected. The petitioner marked other documents on 13.04.2016. P.W.1 was cross-examined and after P.W.3 was examined, the case was posted for arguments. The learned counsel for the petitioner advanced arguments and suit was adjourned for arguments on behalf of the respondent. At that

stage, the present application was filed by the petitioner and the same is not maintainable. The present application is hit by the principles of resjudicata and prayed for dismissal of the said I.A.

5.The learned Judge by common order dated 09.03.2017, considering the judgment reported in **2015 (6) CTC 467 [Ramachandran vs. Guruvi Reddy]**, dismissed the I.A. holding that the petitioner is tracing his title based on the unregistered document, which cannot be permitted to be marked and already a specific adjudication was given not permitting the petitioner to mark the document.

6.Against the said fair and decretal order dated 09.03.2017 made in I.A.No.144 of 2017 in O.S.No.19 of 2013, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that the learned Judge failed to see that the petitioner has already paid stamp duty and penalty. An unregistered sale deed can be relied on by the

petitioner for collateral purpose. The property was assigned by the Government for construction of huts for poor people. An assignment patta is enough to prove the title and registered sale deed is not necessary to prove the possession and title against the private individual, when the case is not filed against the Government and prayed for allowing the Civil Revision Petition.

8.The learned counsel appearing for the respondent made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

10.From the materials on record, it is seen that the petitioner in the suit for declaration and injunction, sought to produce unregistered sale deed. The trial Court directed the petitioner to pay the stamp duty and

penalty. The petitioner did not pay the stamp duty and penalty as ordered by the learned Judge, for three years. By the order dated 24.03.2016, the learned Judge held that unregistered document cannot be marked. The petitioner did not challenge the said order, but examined P.W.1 to P.W.3 and marked other documents. After closure of evidence of respondent, the suit was posted for arguments. The counsel for the petitioner argued the matter and when the suit was posted for arguments of respondent, the petitioner filed present two applications I.A.No.143 of 2017 to re-open the case and I.A.No.144 of 2017 to re-open and re-call P.W.1. Both the I.As. were dismissed on the ground that already an adjudication was made rejecting the request of the petitioner to mark the document and petitioner is tracing title only through unregistered document. It is not the case of the petitioner before the learned Judge that the petitioner has already paid stamp duty and penalty. On the other hand, in the affidavit filed in support of the present I.A., the petitioner has stated that the petitioner was under the impression that unregistered sale deed was marked after payment of stamp duty and penalty and by inadvertence, the

said document was not marked. Further it is not the case of the petitioner that he is relying on unregistered document only for collateral purpose. The petitioner has also not denied that in the earlier suit O.S.No.383 of 2000 also, the request of the petitioner to mark the said document was rejected.

11.Further the petitioner filed two applications in I.A.Nos.143 and 144 of 2017 to re-open and re-call P.W.1. The learned Judge considering all the materials in proper perspective and the judgment reported in **2015 (6) CTC 467 cited supra**, by common order dated 09.03.2017, dismissed both I.As. The petitioner has not filed any revision challenging the order dismissing the I.A. for re-opening the case. Unless the case is re-opened, PW.1 cannot be re-called for further evidence. On this ground also, this Civil Revision Petition is liable to be dismissed. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

12.For the above reasons, the Civil Revision Petition stands

dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.10.2021

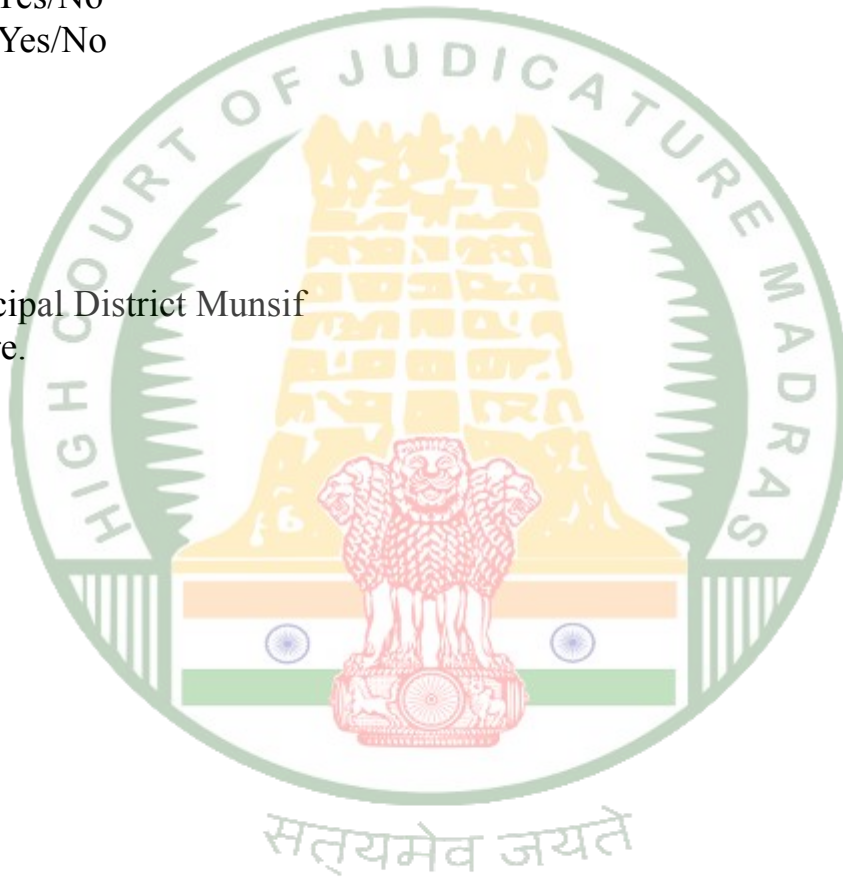
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To

The Principal District Munsif
Cuddalore.

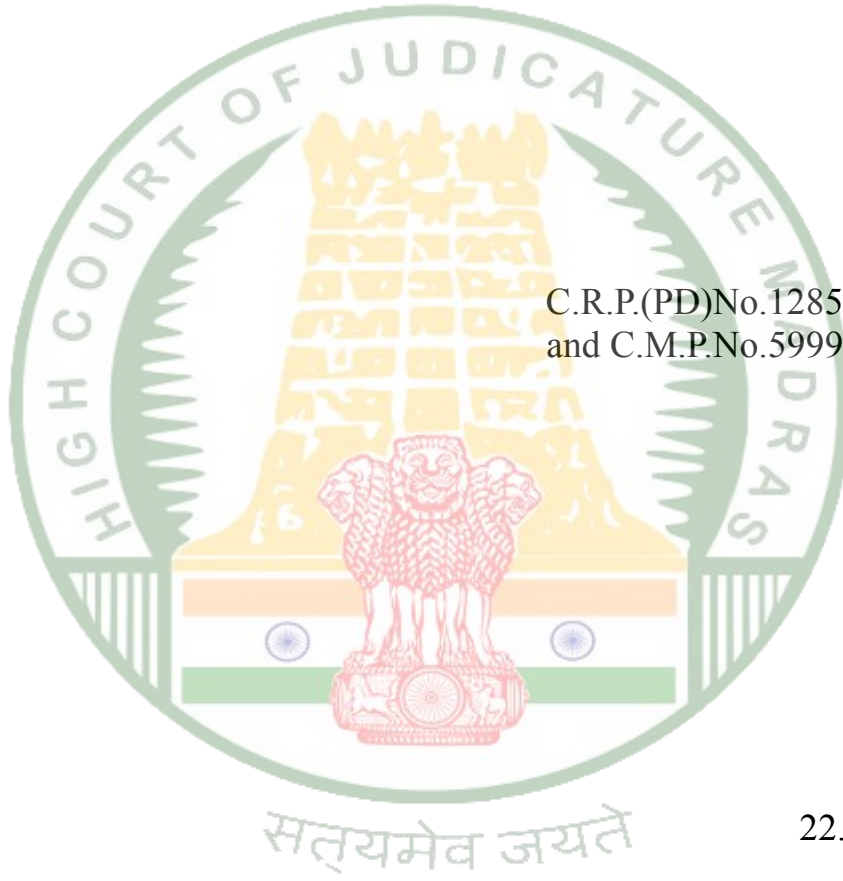


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V.M.VELUMANI,J.

C.R.P.(PD)No.1285 of 2017

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