

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.156 of 2017
and C.M.P.No.647 of 2017

Seerangayee

.. Petitioner

Vs.

K.Subramani

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and order dated 08.07.2015 made in C.M.A.No.24 of 2014 on the file of the Principal District Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.C.Mahendran
for M/s.R.Neelakandan

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the petition and order dated 08.07.2015 made in C.M.A.No.24 of 2014 on the file of the Principal District Court, Salem.

2.The petitioner is 3rd defendant in O.S.No.174 of 2008 on the file of the II Additional Sub Court, Salem. The respondent filed the said suit for specific performance against the 1st defendant, who is the son of the petitioner herein. Subsequently, the grandmother of the 1st defendant and this petitioner who is the mother of the 1st defendant were added as defendants 2 and 3 vide order in I.A.No.175 of 2011 dated 30.03.2011. The suit was decreed exparte on 16.07.2013. The petitioner and 1st defendant filed I.A.No.85 of 2014 to set aside the exparte decree dated 16.07.2013. In the said application, notice was ordered and the petitioner and 1st defendant did not serve the notice on the respondent. Due to the same, the said I.A.No.85 of 2014 was dismissed for default. Again, the

petitioner and 1st defendant filed present I.A.No.111 of 2014 to restore I.A.No.85 of 2014, which was dismissed for default on 17.02.2014. According to the petitioner, due to her ill-health, notice was not served on the other side and prayed for allowing I.A.No.111 of 2014. The respondent filed counter affidavit denying all the averments and submitted that he filed suit for specific performance of agreement of sale dated 31.10.2007, executed by the 1st defendant. The 1st defendant was set exparte for not filing written statement. The petitioner and 1st defendant filed I.A.No.85 of 2014 to set aside the exparte decree and delayed in numbering the said I.A. for six months. Even after notice being ordered, the petitioner and 1st defendant did not take any steps to serve the respondent and in view of the same, the said I.A.No.85 of 2014 was dismissed for default. Only with an intention to delay the respondent getting the sale deed executed in his favour, the petitioner has come out with I.A.No.111 of 2014 and prayed for dismissal of I.A. The learned Judge, considering the averments in the affidavit and counter affidavit, by the order dated 17.03.2014, dismissed I.A.No.111 of 2014. Against the said order, the petitioner filed C.M.A.No.24 of 2014 on the file of the

District Court, Salem. The learned Judge returned the C.M.A. on the ground that the appeal is not maintainable. Against the said return dated 08.07.2015 made in C.M.A.No.24 of 2014, the petitioner has come out with the present Civil Revision Petition.

3.When the Civil Revision Petition was taken up for hearing, the learned counsel appearing for the petitioner sought permission of this Court to raise grounds challenging the order dated 17.03.2014 made in I.A.No.111 of 2014 and this Court permitted the petitioner to raise additional grounds in the present Civil Revision Petition.

4.The learned counsel appearing for the petitioner submitted that the order of the learned Judge in I.A.No.111 of 2014 is erroneous and passed without application of mind. The learned Judge failed to see that I.A.No.111 of 2014 is filed only to restore I.A.No.85 of 2014, which was filed to set aside the exparte decree made in O.S.No.174 of 2008. The said I.A.No.85 of 2014 was filed within the time limit and there is no delay. The petitioner has no intention to delay the proceedings. The

learned Judge without giving any reason, dismissed I.A.No.85 of 2014. The petitioner has got good case on merits in the suit and prayed for allowing the Civil Revision Petition.

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

6.From the materials on record, it is seen that the respondent filed suit for specific performance of agreement of sale dated 31.10.2007, executed by the 1st defendant. He did not file the written statement and he was set exparte for not filing written statement on 16.07.2013. The 1st defendant filed written statement and stated that the settlement deed dated 07.12.2005 executed by his grandmother was cancelled by her on 03.12.2008. On such averments, the 1st defendant's grandmother was impleaded as 2nd defendant and on her death, the petitioner herein was impleaded as 3rd defendant, as per the order dated 30.03.2011 made in I.A.No.175 of 2011. The petitioner and 1st defendant filed I.A.No.85 of 2014 to set aside the exparte decree and delayed in numbering I.A. for

six months. The 1st defendant did not file written statement and he was set exparte on 29.09.2008 for not filing written statement and on his application, the said order was set aside. Again the suit was posted for trial on 07.03.2012 and the respondent examined himself as P.W.1. The suit was posted for cross-examination of P.W.1 by the petitioner and 1st defendant. The petitioner and 1st defendant did not cross-examine, even after taking number of adjournments. On 13.06.2012, the exparte decree was passed against the petitioner and 1st defendant. On application, the said exparte decree was set aside and suit was posted for cross-examination of P.W.1. Again on 16.07.2013, they did not appear and exparte decree was passed on that day. The petitioner filed I.A.No.85 of 2014 to set aside the exparte decree. From the counter affidavit filed by the respondent and order of the learned Judge, it is seen that I.A. was filed on 05.08.2013, but it was numbered only after six months. This shows that the counsel did not take steps immediately after filing I.A. Even after the said I.A. was numbered and notice was ordered to the respondent, the petitioner and 1st defendant did not serve the notice on the respondent and the said I.A. was dismissed for default. According to

the petitioner, due to her ill-health, notice could not be served on the respondent. When the notice is ordered, notice will be served by the counsel for the petitioner. The petitioner has not given any reason as to why her counsel has not served notice to the respondent. Further, to restore the said I.A., the petitioner and 1st defendant filed I.A.No.111 of 2014. A reading of the affidavit filed in support of the present I.A. shows that the reason given by the petitioner to restore I.A.No.85 of 2014 is not valid. The learned Judge has considered the fact that earlier, on two occasions, ex parte decree was passed and set aside applications were filed by the petitioner and 1st defendant and considering all the materials placed before him, dismissed I.A. by giving cogent and valid reason and has exercised his power properly. It is to be noted that suit is for specific performance of agreement of sale and after ex parte decree, the respondent deposited balance sale consideration of Rs.2,22,000/- into the Court. Further, the present Civil Revision Petition is filed only by the petitioner and the 1st defendant has not filed any revision. Considering the nature of the suit, attitude of the petitioner and 1st defendant and the contention of the learned counsel for the respondent that the petitioner is

adopting delaying tactics from preventing the respondent to get the sale deed executed in his favour and taking possession, the reasons given by the petitioner are not acceptable.

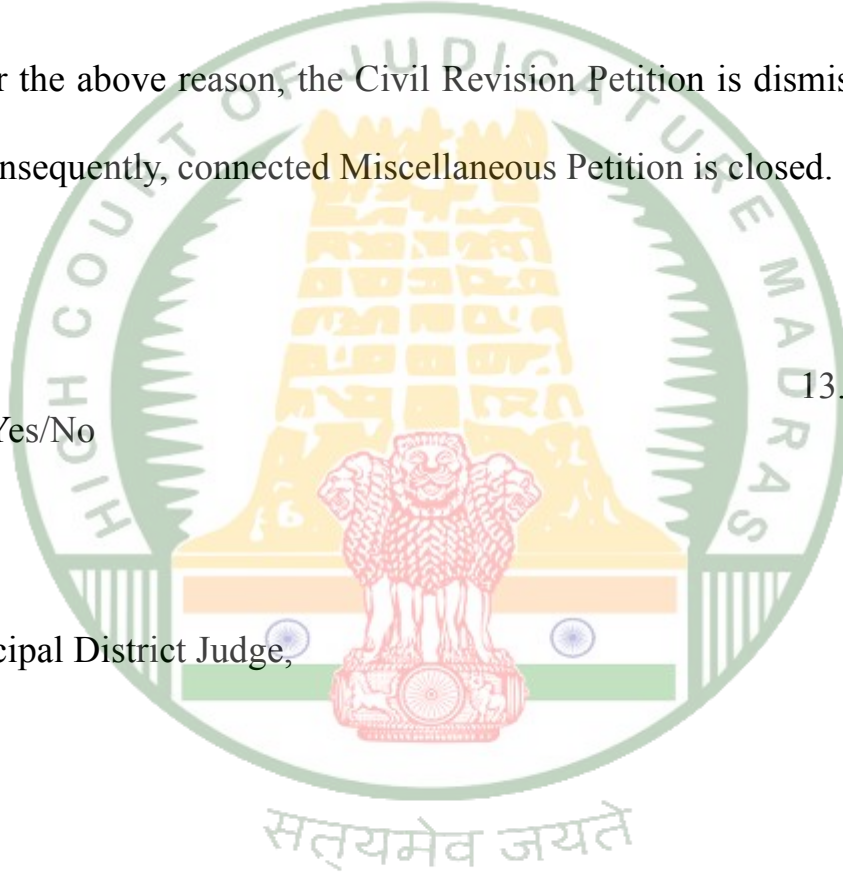
For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

The Principal District Judge,
Salem.

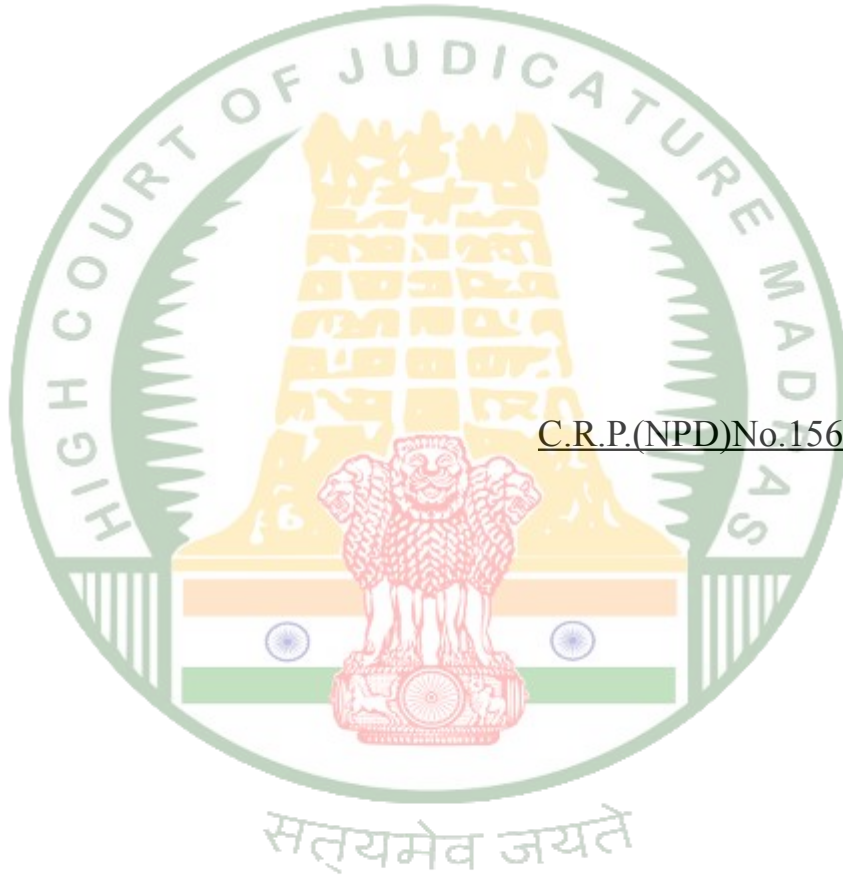


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