

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

CRP (PD) No.2623 of 2017 and
CMP No.12511 of 2017

V.N.Vijayan .. Petitioner

Vs.

M.Babu ... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the Fair and Decretal Order passed by the learned Subordinate Judge, Ponneri in I.A.No.164 of 2013, dated 01.07.2016 in O.S.No.96 of 2012.

For Petitioner : Mr.T.N.Sugesh

For Respondent : Mr.I.Rathinavel

ORDER

(This case has been heard through video conference)

The Civil Revision Petition has been filed against the fair and decreetal order, dated 01.07.2016 made in I.A.No.164 of 2013, in O.S.No.96 of 2012 on the file of the learned Subordinate Judge, Ponneri, dismissing the petitioner filed under Order VII Rule 11 of the Code of Civil Procedure

to reject the plaint.

2. The brief facts of the case are as follows:

The revision petitioner is the defendant in the suit in O.S.No.96 of 2012. The respondent/ plaintiff had filed a suit for specific performance directing the revision petitioner to come and execute the sale deed in respect of the defendant's suit property in favour of the plaintiff at the cost of the plaintiff and in case if the defendant failed to do so, a direction to register the necessary Sale Deed in respect of the sale in favour of the plaintiff at the cost of the plaintiff.

3. It is the case of the plaintiff that he entered into the Sale Agreement with the defendant on 12.07.2006 in respect of the Suit Schedule Property and as per the terms and conditions of the registered Sale Agreement, the total sale consideration was fixed at Rs.7 lakhs, in which the plaintiff has paid a sum of Rs.1,50,000/- through two cheques bearing Nos.520476 and 520477. It was also encashed by the defendant and accordingly, the remaining Sale Consideration of Rs.5,50,000/- has got to be paid and the sales should be completed within a period of three months from the date of Sale Agreement, dated 12.07.2006. It is the further case of the

respondent/ plaintiff that despite his willingness to pay the balance sale consideration, the defendant failed to come and execute and register the Sale Deed. Thereafter in July 2009, the plaintiff arranged Panchayat and after serious discussion, the defendant agreed to come, execute and register the sale deed in favour of the plaintiff within six months from 11.07.2009 and on the receipt of the sale consideration and to the effect of settlement, the defendant had made an endorsement on the backside of the original registered Sale Agreement in the presence of two witnesses. Denying the endorsement made on the backside of the Original registered Sale Agreement, the Revision Petitioner/defendant had filed a petition, seeking to reject the plaint stating that the endorsement was forgery.

4. The trial Court finding that the plea of denial of endorsement can be decided only through trial, had dismissed the petition, against which the present Revision has been filed.

5. The learned counsel for the Revision Petitioner would submit that the respondent/plaintiff had entered into the Sale Agreement with the

petitioner/defendant on 12.07.2006 and as per the registered Sale Agreement, the Sale has to be completed within a period of three months, i.e., on or before 11.10.2006, whereas the plaintiff has miserably failed to do so. Later on, based on the fabricated endorsement, the defendant had extended the period of limitation and filed the suit during the year 2012, which is beyond the period of limitation and thereby the petitioner had filed the petition to reject the plaint. The trial Court without taking into consideration the primary plea of forgery of documents and without deciding the issues of forgery, had erroneously dismissed the petition. He would thereby seek to set aside the order.

6. Per contra, the learned counsel for the respondent would submit that the sale agreement is a registered one, dated 12.07.2006. The petitioner has also parted with the advance amount, and thereafter, the revision petitioner/defendant was delaying execution of the Sale Agreement, claiming more amount. Thereafter, panchayat was conducted and after deliberation, the Revision petitioner / defendant had made an endorsement extending the period of limitation. He would further submit that it is a

matter for trial after testing the genuinity of the endorsement made and the trial Court rightly holding that it is the matter for trial, had dismissed the same.

7. Heard the learned counsel and perused the materials available on record.

8. The Revision petitioner / defendant has denied the endorsement made in the original Sale Agreement. In the opinion of the Court, it is the matter for trial. The trial Court rightly finding that the genuinity or otherwise of the endorsement is a matter for evidence had refused to reject the plaint and had rightly dismissed the petition. I do not find any infirmity in the order. However, taking into consideration that the suit is of the year 2012, a direction is issued to the concerned trial Court to complete the trial within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

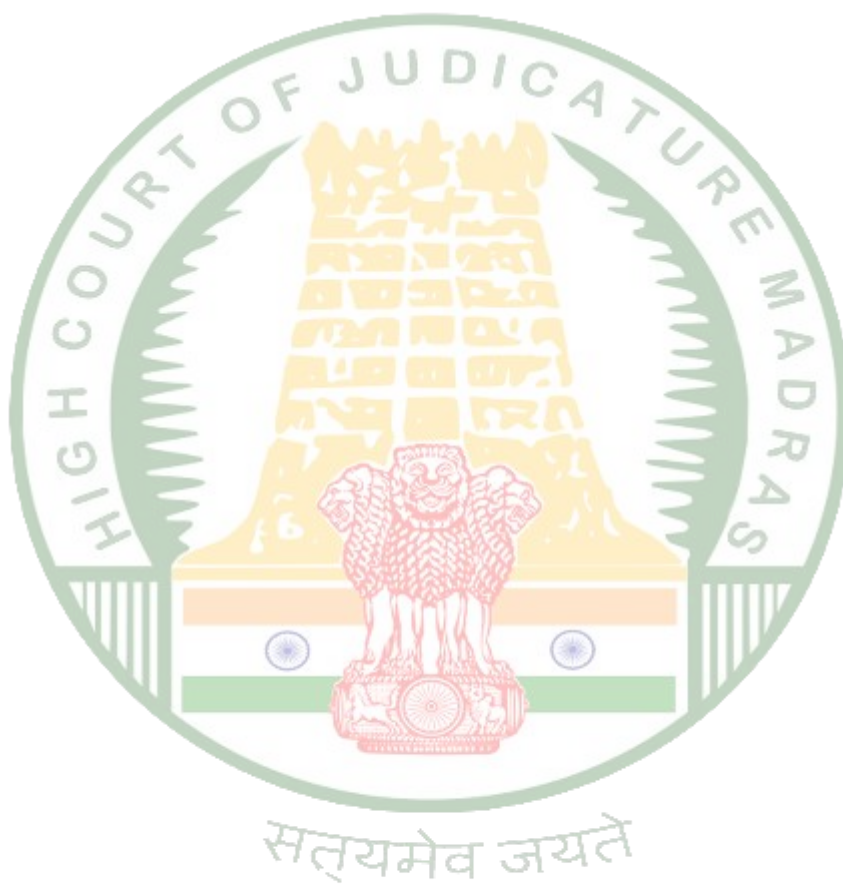
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Index: Yes/No

Speaking order / Non speaking order



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A.D.JAGADISH CHANDIRA, J.

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To

The Subordinate Judge,
Ponneri



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