

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.719 of 2017 and
CMP.No.3616 of 2017

1.Sujatha Moorthy
2.M/s.Mitra Home Makers(P) Ltd.,
By its Managing Director,
M.S.Moorthy ..Petitioners
Vs.
Muthukumar ..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order dated 20.10.2016 passed by the learned Additional Subordinate Judge, Chengalpet IA.No.137 of 2014 in OS.No.4 of 2010.

For Petitioners : Mr.S.Giritharan

For Respondent : No appearance

ORDER

This civil revision petition is filed against the fair order and decretal order dated 20.10.2016 passed by the learned Additional Subordinate Judge, Chengalpet in IA.No.137 of 2014 in OS.No.4 of 2010, thereby allowing the petition to condone the delay of 998 days in filing the petition to restore the suit.

2. The petitioners are the defendants in the suit filed by the respondent for declaration declaring that the sale deed executed by the first petitioner in favour of the second petitioner in respect of the suit property is null and void. When the suit was posted for trial, the respondent did not appear and his counsel also not appeared before the court below and as such the suit was dismissed for default on 19.08.2011. Thereafter, the respondent and the petitioners along with others have entered into memo of understanding dated 15.03.2012. The memo of understanding was entered between the petitioners and the respondent on the following terms:

(i) The parties herein mutually agree that disputes between them pertaining to the said property have been settled amicably and the fifth party herein assure and agrees to withdrawn the criminal case pending against the second to fourth party herein before the Hon'ble XIth Metropolitan Magistrate at Saidapet in CC.No.5494 of 2010 by filing the compromise petition.

(ii) The first, second, third and fourth parties do hereby state, confirm and declare that the fifth party herein is the sole and absolute owner of the said property and they have every right to deal with and dispose off the said property in any manner as they deem fit and property

(iii) The first, second, third, fourth parties further state that they have no claim, right, title or interest in, to and upon the said property in any manner whatsoever

(iv) The parties hereby declare that they have obtained independent legal advice and they are executing this deed with their own free will.

3. After having been compromised the issue with the petitioners herein, the respondent filed petition to restore the suit and suppressing those facts with the condone delay petition. On perusal of the affidavit filed in support of the condone delay petition revealed that the respondent originally engaged an advocate by name Seetharaman and thereafter he failed to follow the suit and as such the suit was dismissed for default on 19.08.2011. Thereafter, he verified with another counsel and found that the suit was dismissed for default as early as 19.08.2011. Therefore, there is a delay of 998 days in filing the petition to restore the suit. There is absolutely no sufficient cause stated by the respondent to condone the delay of 998 days in filing the petition to restore the suit. Except the reason that earlier counsel failed to follow the suit, the respondent being plaintiff, he ought to have followed the suit, that too for declaration. The memo of compromise dated 15.03.2012 revealed that the matter has been compromised between them and there is a categorical clause that the respondent has no claim, right, title or interest in, to and upon the suit property in any manner whatsoever. Thereafter, the respondent filed petition to restore the suit suppressing the above said facts.

4. Therefore, the respondent did not approach the court with clean hands and filed the affidavit without any sufficient cause. Even before this Court, notice was duly served in the present civil revision petition and though name is printed in the cause list, no one appeared on behalf of the respondent before this Court in person or through pleader. It shows that the matter has been already compromised between them and he has no interest to pursue the suit.

5. Considering the above, this civil revision petition is allowed and the order dated 20.10.2016 passed by the learned Additional Subordinate Judge, Chengalpet in IA.No.137 of 2014 in OS.No.4 of 2010 is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

01.04.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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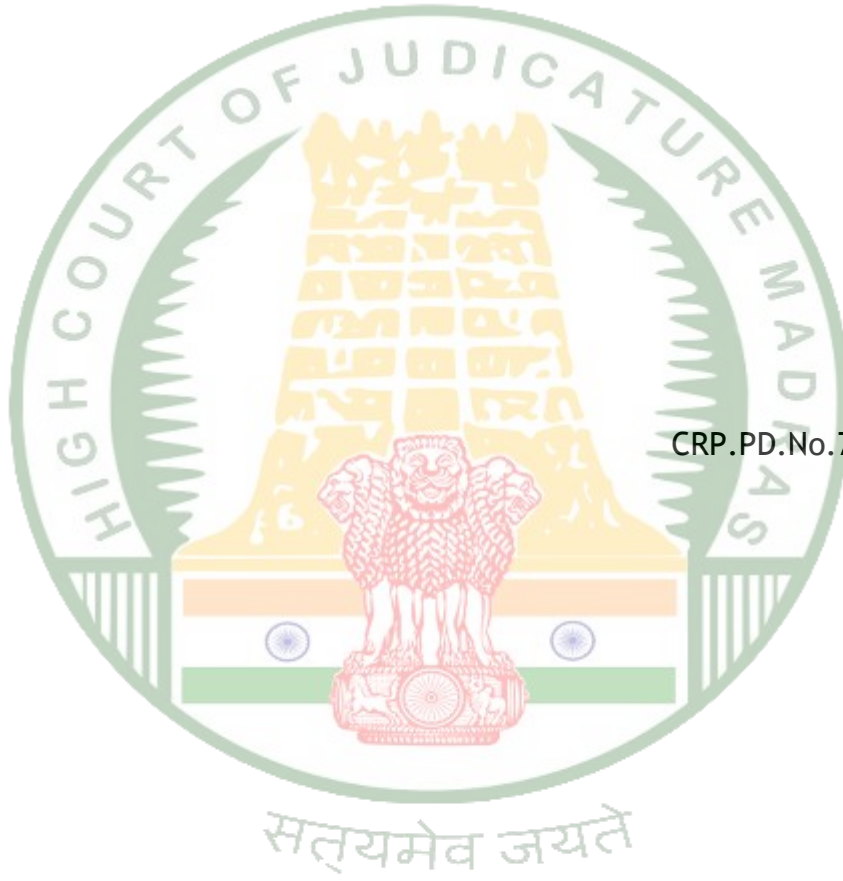
The Additional Subordinate Judge,
Chengalpet



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G.K.ILANTHIRAIYAN,J.

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