

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

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

CRP.NPD.No.4036 of 2018 and
CMP.No.22331 of 2018

Vinayaga Savithri

..Petitioner

Vs.

Sekar

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order dated 27.06.2018 passed in EA.No.32 of 2018 in EP.No.14 of 2013 in OS.No.4 of 2012 on the file of the learned Additional Sub Judge at Puducherry and to set aside the same.

For Petitioner : Mr.Rakash Adiadam

For Respondent : Mr.R.Thiagarajan

WEB COPY
ORDER

This Civil Revision Petition is filed against the order dated 27.06.2018 passed in EA.No.32 of 2018 in EP.No.14 of 2013 in OS.No.4 of 2012 on the file of the learned Additional Sub Judge at

Puducherry, thereby dismissing the petition filed to pass an order for recession of the agreement for sale.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for specific performance on the strength of the agreement for sale dated 22.08.2008. In the suit, the petitioner was set exparte and exparte decree was passed on 01.11.2012 as follows:

"2.that the defendant is hereby directed to execute the registered sale deed conveying the title and handing over possession of the schedule mentioned property in favour of the plaintiff within 60 days from today and thereafter receive the balance sale consideration of Rs.25,000/- from this Court as per suit referred agreement for sale dated 22.08.2008, failing which the plaintiff is entitled to get the sale deed executed through the process of Court;

3.that one month time is hereby granted to the plaintiff for depositing the balance sale consideration of Rs.25,000/-"

3. The certificate copy of the decree was made ready on 27.12.2012. Within a period of one month from the decree which was made ready, the respondent filed memo on 22.01.2013 along with lodgment schedule seeking permission to deposit the amount. On the

said memo by an order dated 22.01.2013, the court below passed the following order:

"As per the decree passed in OS.No.4 of 2012 dated 01.11.2012, one month time was granted to the plaintiff for depositing balance sale consideration of Rs.25,000/-. Since the plaintiff has obtained the certified copy of the judgment and decree in the above case on 27.12.2012, now he filed this petition and praying permission to deposit the balance sale consideration of Rs.25,000/- (Rupees Twenty Five Thousand only) in any one of the Nationalised Bank, for a period of three years in the name of Additional Sub Judge, Pondicherry on the account of J.Vinayage Savithri, W/o.Jothivelu, D/o.Sellappan, Hindu, residing at Pudukuppam Village, Embalam Mathura, Nattapakkam Commune, Pondicherry."

4. Accordingly, the said order copy was received on 04.02.2013. On the same day, he deposited balance sale consideration before the Indian Bank, Mudaliarpur Branch by way of fixed deposit. Even then, the petitioner did not come forward to execute the sale deed in his favour and as such through the process of Court, sale deed was executed on 27.11.2018 in EP.No.14 of 2013. The respondent is in possession and enjoyment of the suit property and as such EP was terminated by order dated 29.11.2018. While pending the execution petition, the petitioner filed petition for recession of agreement for sale

executed by him for the reason that the respondent failed to deposit balance sale consideration as per the decree i.e. within a period of one month from the date of the decree.

5. The learned counsel for the petitioner would submit that the decree is very clear that the petitioner was directed to execute the sale deed and also hand over the possession of the suit property within a period of sixty days from the date of decree. Thereafter, he was permitted to receive balance sale consideration. The second limb of the decree is that the plaintiff was directed to deposit balance sale consideration within a period of one month. Admittedly, the respondent failed to deposit balance sale consideration within a period of one month from the date of the decree. He deposited only on 04.02.2013.

6. It is pertinent to mention here that though the decree was passed and directed the respondent to deposit balance sale consideration within a period of one month, not specifically mentioned whether from the date of the decree or receipt of the decree. However, in paragraph 2 of the decree, within a period of 60 days from the date of the decree, the petitioner was directed to execute sale deed and also hand over the possession of the property.

Thereafter, he was permitted to receive balance sale consideration. But the respondent without the decree, he could not able to deposit balance sale consideration and as such he filed memo within a period of one month from the date of the decree, which was made ready i.e. 22.01.2013 seeking permission to deposit balance sale consideration. The court below passed order on 22.01.2013 on the memo and permitted the respondent to deposit balance sale consideration in any one of the nationalised bank. Accordingly, on the date of receipt of the order, on the memo dated 04.02.2013, the respondent deposited balance sale consideration.

7. Thereafter, if at all any grievance over the order passed on the memo, the petitioner could have very well challenged the same. Whereas the petitioner filed separate petition, that too in the year 2018, after a period of five years from the date of deposit, the present petition has been filed for recession of agreement for sale. Therefore, the court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

8. Accordingly, this civil revision petition is dismissed. However, the petitioner is at liberty to challenge the order passed on the memo dated 22.01.2013 in the manner known to law, if

so advised, after satisfying the limitation. Consequently, connected miscellaneous petition is closed. No order as to costs.

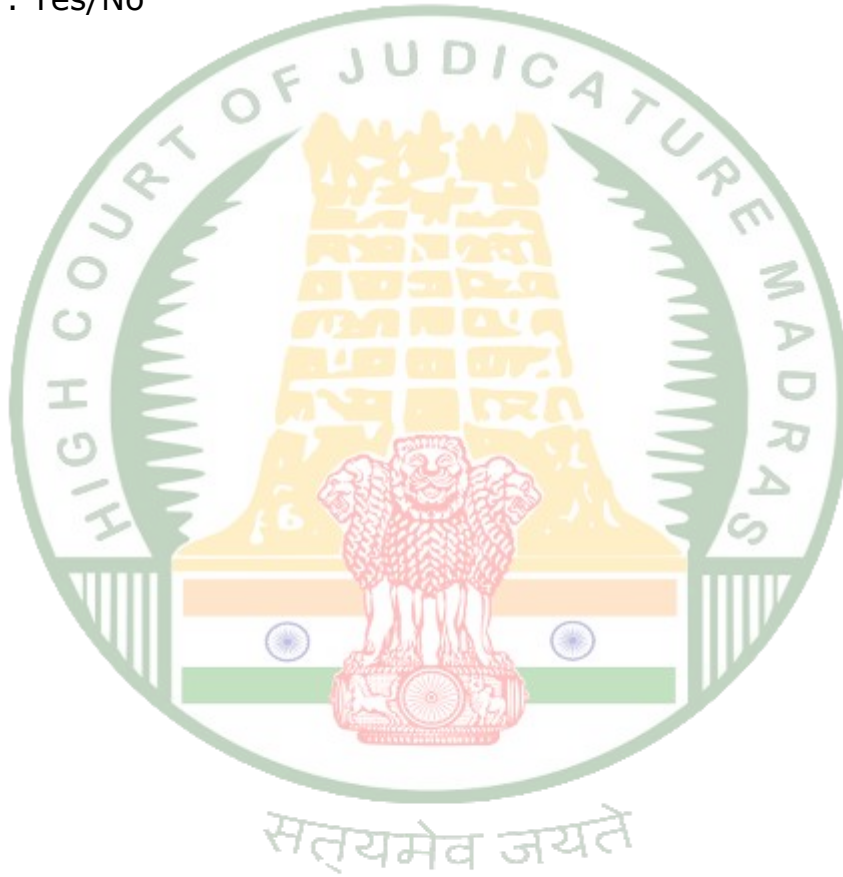
22.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

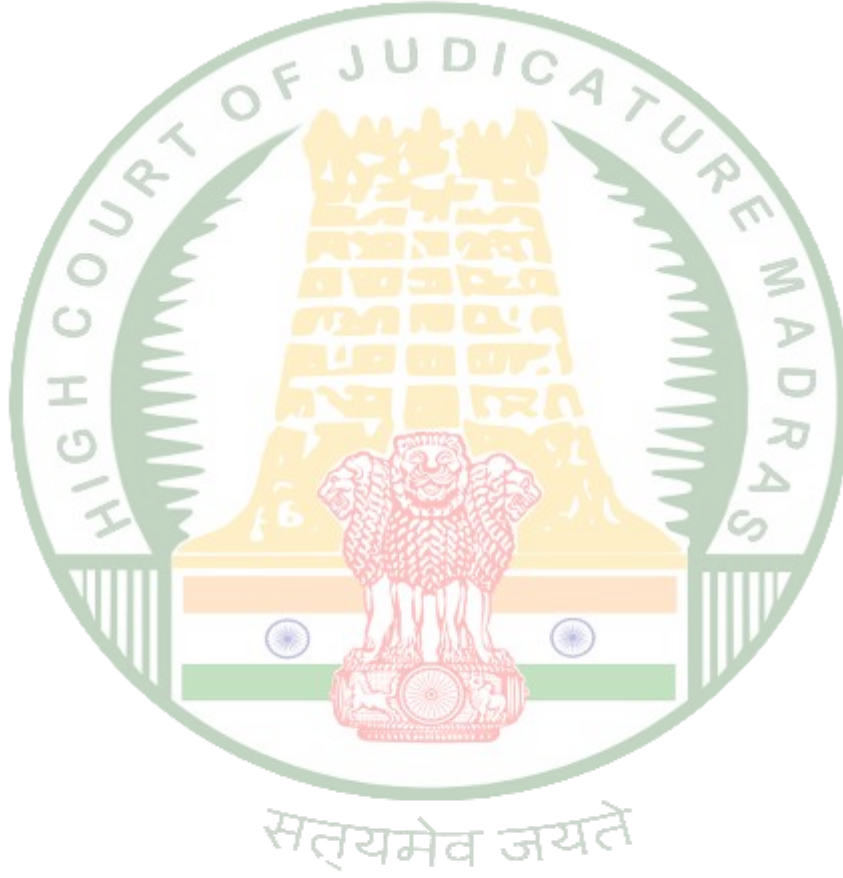
lok



WEB COPY

To

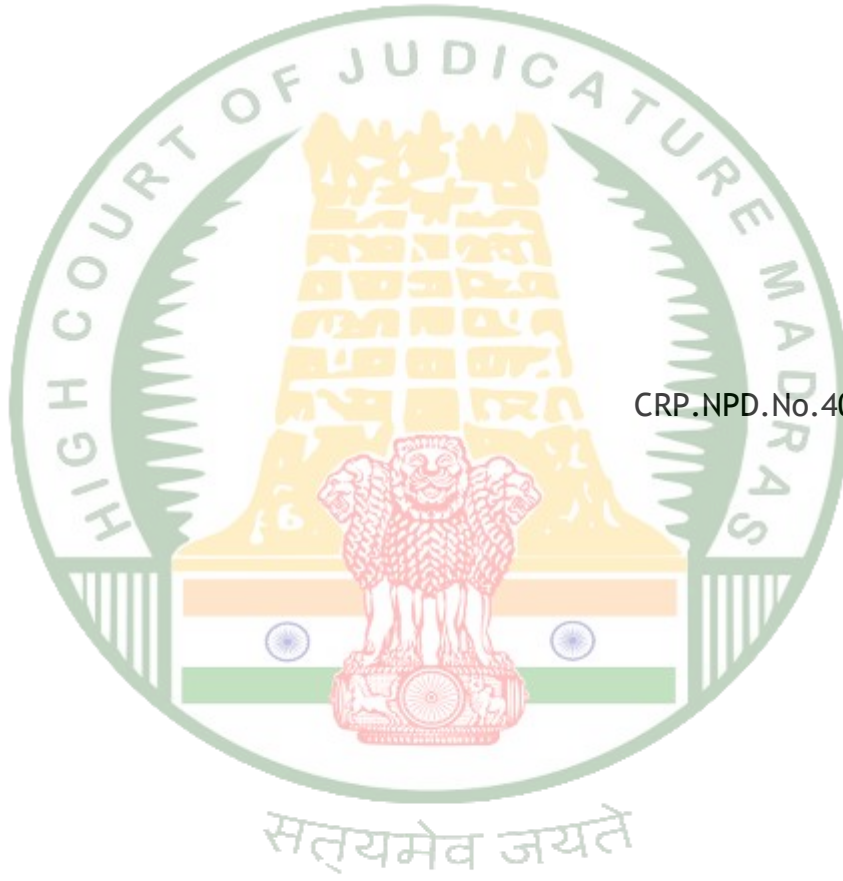
The Additional Sub Judge
at Puducherry



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.NPD.No.4036 of 2018

WEB COPY

22.04.2021