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C.M.A.No.2610 of 2013 And
C.R.P.No.2854 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2610 of 2013

And

M.P.No.1 of 2013

And

C.R.P.No.2854 of 2013

And

M.P.No.1 of 2013

C.M.A.No.2610 of 2013:

Balusamy

... Appellant

Vs.

1.Boopalan

2.Gopal

3.Kannammal

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of the Civil Procedure Code, to set aside the fair and decreetal order of the order of the Principal District Judge at Villupuram, dated 09.07.2013 in I.A.No.460 of 2012 in O.S.No.13 of 2009.



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For Appellant : Mr.P.Valliappan
Senior Counsel
for M/s.S.M.S.Shriram Narayanan

For Respondents : Mr.V.Manohar for R1
R2 & R3 – No Appearance

C.R.P.No.2854 of 2013:

Balusamy ... Petitioner

Vs.

1.Boopalan
2.Gopal
3.Kannammal

... Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the order of the Principal District Judge at Villupuram, dated 09.07.2013 in I.A.No.461 of 2012 in O.S.No.13 of 2009.

For Petitioner : Mr.P.Valliappan
Senior Counsel
for M/s.S.M.S.Shriram Narayanan

For Respondents : Mr.V.Manohar for R1
R2 & R3 – No Appearance



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COMMON JUDGMENT

The civil miscellaneous appeal has been filed seeking to set aside the fair and decreetal order of the order of the Principal District Judge at Villupuram, dated 09.07.2013 in I.A.No.460 of 2012 in O.S.No.13 of 2009.

2.The civil revision petition has been filed seeking to set aside the fair and decreetal order of the order of the Principal District Judge at Villupuram, dated 09.07.2013 in I.A.No.461 of 2012 in O.S.No.13 of 2009.

3.Since the issue involved in the civil miscellaneous appeal and civil revision petition are interrelated, they are heard together and disposed of by way of a common judgment.

4.The learned Senior Counsel appearing for the appellant in civil miscellaneous appeal/ petitioner in civil revision petition would submit that the appellant/ petitioner filed a suit for specific performance as against the second respondent in respect of 40/54 shares in



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O.S.No.142 of 2003 claiming that the second respondent/ second defendant and first defendant along with their brothers entered into an agreement of sale on 20.04.1987 agreeing to convey their 40/54 share in favour of the appellant/ petitioner and they received advance of Rs.40,000/- from the appellant/ petitioner, however, thereafter though the appellant/ petitioner was ready to pay the balance amount, they did not take any steps for completion of sale and the said suit was decreed in favour of the appellant/ petitioner vide judgement dated 30.11.2007 on the file of Sub Court, Kallakurichi against which the second respondent filed interlocutory application in O.S.No.142 of 2003 seeking to set aside the judgement dated 30.11.2007 and the said application was rejected before numbering on 27.01.2012 and challenging the same, the second respondent filed revision in C.R.P. (NPD) No.2572 of 2012 before this Court and this Court vide order dated 07.11.2012 dismissed the said revision and aggrieved by the said order, the second respondent filed S.L.P.No.26829 of 2013 vide order dated 28.04.2014, dismissed the said S.L.P.

5.The learned Senior Counsel appearing for the appellant in civil miscellaneous appeal/ petitioner in civil revision petition would further submit that in the meantime, the first respondent filed suit for specific



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performance in O.S.No.13 of 2009 on the file of Principal District Judge at Villupuram as against respondents 2 and 3, as if there was agreement between the first respondent and respondents 2 and 3 and the said suit was decreed exparte on 24.11.2009 and without impleading the petitioner, in respect of the very same property. Thereafter, without filing execution petition, sale deed was executed by respondents 2 and 3 in favour of first respondent and after coming to know about all these things, the appellant/ petitioner filed I.A.No.460 of 2012 under Order 9 Rule 13 of C.P.C. to set aside the exparte decree passed in the suit on 24.11.2009 and I.A.No.461 of 2012 under Order 1 Rule 10 of C.P.C. to implead the necessary party and rank him as defendant no.3 and both the interlocutory applications were dismissed. Challenging the same, appellant/ petitioner has filed the civil miscellaneous appeal and civil revision petition.

6.The learned counsel appearing for the first respondent in the civil miscellaneous appeal as well as in the civil revision petition would submit that without going into the merits of the case, this Court may set aside the orders impugned and permit the parties to adjudicate the issue before the trial Court and issue direction to the trial Court to



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restore O.S.No.13 of 2009 and to give opportunity to the appellant/
petitioner as well as the respondents/ respondents to put forth their
case afresh.

7.The learned Senior Counsel appearing for the appellant in civil
miscellaneous appeal/ petitioner in civil revision petition raise no
serious objection.

8.Considering the submissions made on either side, the fair and
decreetal orders of the orders of the learned Principal District Judge at
Villupuram, dated 09.07.2013 in I.A.Nos.460 and 461 of 2012
respectively, in O.S.No.13 of 2009, are set aside. I.A.No.460 of 2012
filed under Order 9 Rule 13 of C.P.C. seeking to set aside the exparte
decree passed in the suit on 24.11.2009 and I.A.No.461 of 2012 filed
under Order 1 Rule 10 of C.P.C. seeking to implead the necessary
party and rank him as defendant no.3 on the file of the learned
Principal District Judge at Villupuram are allowed and the trial Court is
directed to restore O.S.No.13 of 2009 back to file and to decide the
suit on merits and in accordance with law and after providing
opportunity to the appellant/ petitioner as well as the respondents/
respondents to put forth their case afresh, as expeditiously as possible.



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9.The civil miscellaneous appeal as well as the civil revision petition are allowed. The fair and decreetal orders of the orders of the learned Principal District Judge at Villupuram, dated 09.07.2013 in I.A.Nos.460 and 461 of 2012 respectively, in O.S.No.13 of 2009, are set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Principal District Judge at Villupuram.



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M.DHANDAPANI,J.
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