

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.NPD.No.4516 of 2013

and

M.P.No.1 of 2013 and

M.P.No.1 of 2014

Shanthi

...

Petitioner

- Vs -

Sivakumar

...

Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India against the Fair and Decreetal Order dated 21.10.2013 and made in E.A.179 of 2012 in E.P.No.28 of 2012 in O.S.No.257 of 2001 on the file of the I Additional Subordinate Court, Cuddalore.

For Petitioner

: Mr.T.S.Baskaran

For Respondent

: Mr.R.Muralidharan

ORDER

This revision is directed against the fair and decreetal order dated 21.10.2013 and made in the execution application in E.A.No.179 of 2012 in E.P.No.28 of 2001 in O.S.No.257 of 2001 on the file of the learned I Additional Subordinate Judge, Cuddalore.

2. It is revealed from the records that the respondent herein had filed a suit in O.S.No.257 of 2001 for recovery of money due under a deed of mortgage on the file of the learned I Additional Subordinate Judge, Cuddalore. In the said suit a preliminary decree was passed on 30.07.2009. Based on the preliminary decree, the respondent had filed a petition in I.A.No.16 of 2010 for passing final decree. According to the revision petitioner without serving notice on her an exparte final decree was passed on 30.09.2010. Based upon the final decree dated 30.09.2010, the decree holder who is the respondent herein had taken out an execution proceeding in E.P.No.28 of 2002.

3. According to the revision petitioner even in the execution petition also notice was not served on her and subsequently an exparte order was passed on 23.04.2012. Thereafter, the revision petitioner had filed an application in E.A.No.179 of 2012 under Order 21 Rule 10(1)(3) of the C.P.C., to set aside the exparte order passed in the E.P.No.28 of 2012 and subsequently that petition was also dismissed.

4. Having been aggrieved by the order of dismissal passed in E.A.No.179 of 2012, present revision is filed. In this connection Mr.T.S.Baskaran, learned counsel for the revision petitioner has submitted that at the time of admission of the revision petition, this Court had granted an interim stay in M.P.No.1 of

2013 on 29.11.2013, directing him to deposit 25% of the decree amount to the credit of the Execution Petition in E.P.No.28 of 2012 on the file of the learned I Additional Subordinate Judge, Cuddalore. That conditional order was complied with. Now as demonstrated by Mr.T.S.Baskaran, the revision petitioner who is the judgment debtor had filed a petition in I.A.No.137 of 2013 to condone the delay in filing a petition to set aside the exparte final decree dated 30.09.2010. That petition was allowed on 26.03.2014. Another application in I.A.No.118 of 2014 was filed to set aside the exparte final decree. This petition was allowed on 16.07.2014 and in consequence there of the exparte final decree dated 30.09.2010 was set aside.

5. Under this circumstance the respondent who is the decree holder had allowed the I.A.No.16 of 2010 to go for default on 12.01.2016 (I.A.16 of 2010 was filed by the decree holder to pass the final decree). Mr.T.S.Baskaran has therefore, submitted that in view of the order dated 12.01.2016 by which the final decree petition was dismissed for default, the execution petition filed by the decree holder in E.P.No.28 of 2012 had become infructuous. Therefore nothing survives in the revision petition. This fact has been fairly conceded by the learned counsel for the respondent.

6. Mr.T.S.Baskaran, learned counsel for the revision petitioner has filed a memo setting out the facts as aforesaid and submitted that the revision petitioner being the judgment debtor might be permitted to withdraw the Civil Revision Petition as not pressed and also to permit him to withdraw the deposit of Rs.1,51,900/- with accrued interest if any which was deposited to the credit of the E.P.No.28 of 2012 in the suit in O.S.No.257 of 2001 in pursuant to the order of this Court.

7. This Court has considered the submission made by the learned counsel for the petitioner and perused the averments of the memorandum and having regard to all the related facts and circumstances, this Court finds that this revision petition may be dismissed as not pressed. Accordingly this revision petition is dismissed as not pressed and the petitioner is permitted to withdraw Rs.1,51,900/- with accrued interest if any which is lying in the credit of E.P.No.28 of 2012 in O.S.No.257 of 2001 on the file of the I Additional Subordinate Judge, Cuddalore. No costs. Consequently, connected miscellaneous petitions are closed.

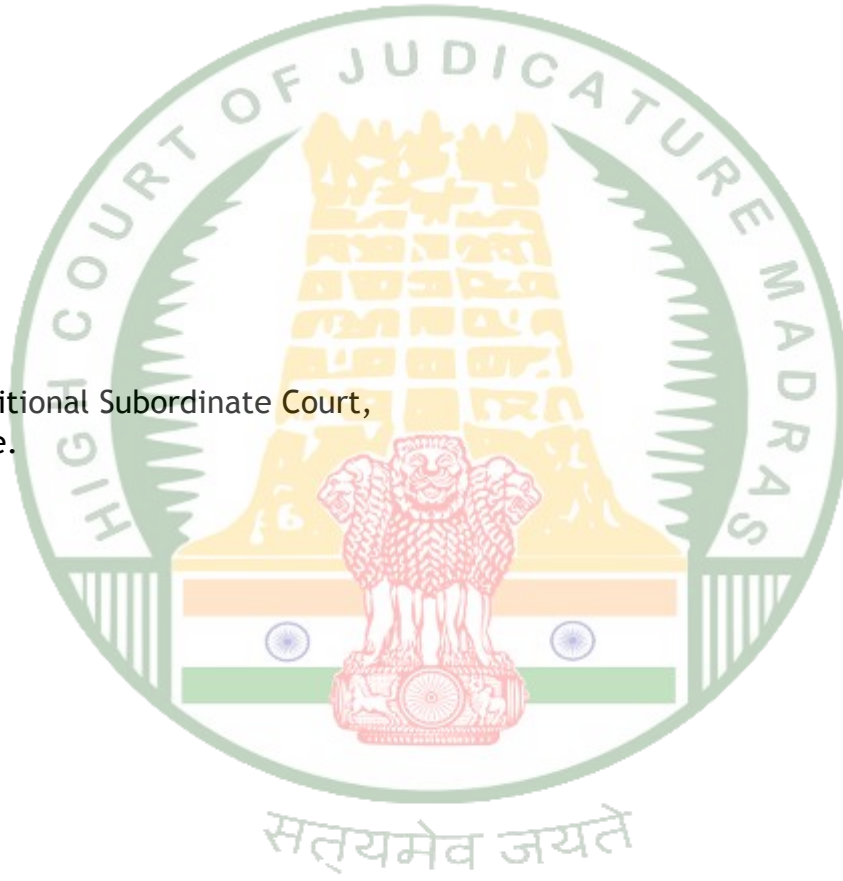
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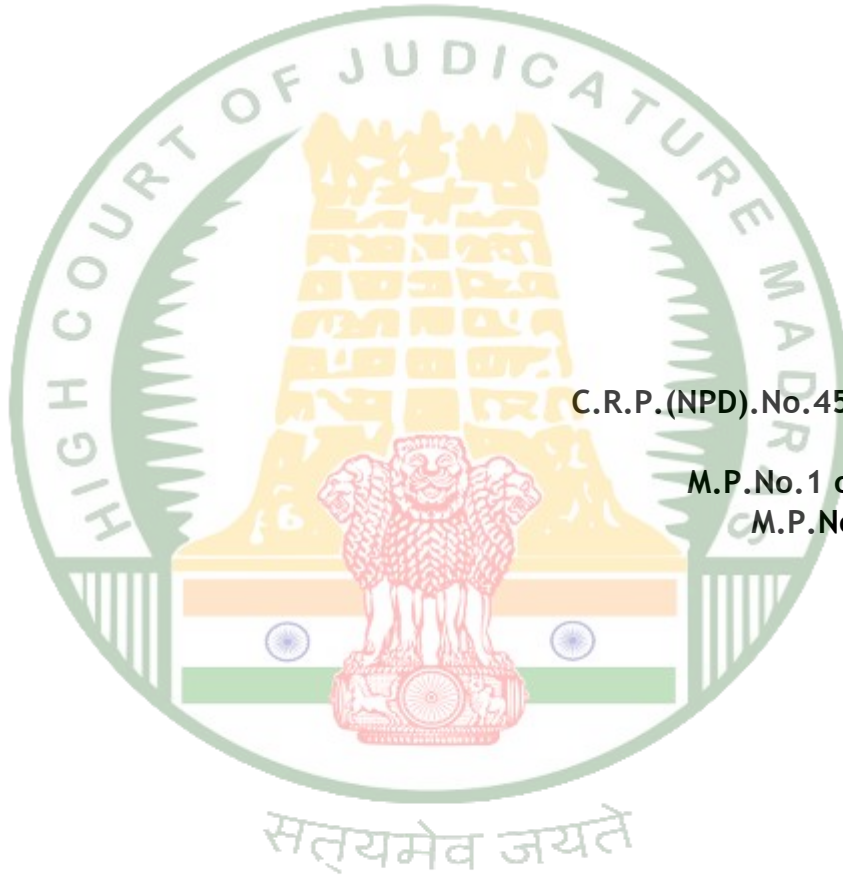
The I Additional Subordinate Court,
Cuddalore.



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T.MATHIVANAN, J.,

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