

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P. (NPD) NO.3546 OF 2017
AND CMP NO.16391 OF 2017

1.Gunaselvi

2.Minor Himalani
D/o. Uthaiyasurian
Rep. by 1st petitioner
(mother as guardian)

3.Vanithadevi

... Petitioners

Vs.

1.Karmuhilan @ Periasamy
2.Chandravadivu
3.Uthaiyasuriyan
4.Kathiravan
5.Anbumani
6.Ravi

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 20.07.2017 made in E.A.No.32/2014 in E.P.No.84/2012 in O.S.No.88/2007 on the file of learned Principal District Judge, Villupuram.

For Petitioners : Mr.T.K.Kulasekaran

ORDER

This Civil Revision Petition is directed against the order dismissing the interlocutory application filed under Section 47, Order 21 and Rule 58 of the Civil Procedure Code.

2. The petitioners claim that they are the title holder of the property found in the execution petition. They seek to exclude their respective shares of properties from the execution petition. The case of the petitioners is that respondent nos.2 to 6 are the judgment debtors and mother and brothers of the petitioners. The father of the petitioners has settled the properties in favour of respondent nos.2 to 6. The second respondent, being a mother has settled her share in favour of the petitioners, who are daughters. By the settlement, they have derived title to the property and now that a decree holder is seeking to take delivery of possession of their property. Therefore, they have filed an interlocutory application to exclude their respective shares of properties settled in their favour from the execution proceedings.

3. On the other hand, the Trial Court has found that the petitioners' father has executed a settlement deed in favour of his wife and sons, who are respondent nos.2 to 6 herein on 17.08.1977. The second respondent executed an unregistered settlement deed on 18.10.2005 in favour of the petitioners. Whereas, the first respondent has filed a suit for specific performance of contract in O.S.No.88/2007. The suit was decreed and the entire property was directed to be sold in favour of the first respondent / decree holder. The question is as to whether the petitioners have derived title to the unregistered settlement deed from the second respondent or not. The Trial Court has categorically found that all the judgment debtors are parties to the suit for specific performance and that they have not challenged the decree and judgment in A.S.No.498/2010. When a decree is legal and binding, the petitioners cannot claim any title through an unregistered settlement deed. Since the petitioners are third parties and not parties to the agreement for sale, the Trial Court has found that they have no right to claim the title and the unregistered settlement is hit by Section 17 of the Registration Act. Therefore, the unregistered settlement, which is an immovable property cannot be

conveyed. As long as the judgment and decree given by this Court in A.S.No.498/2010 is valid and legal, the Executing Court cannot go behind the decree. The Executing Court has dismissed the claim petition under Section 47 read with Order XXI Rule 58 of the Civil Procedure Code as unsustainable and untenable.

4. Admittedly, the petitioners are third parties and not parties to the agreement and they have not derived any title to the property and therefore, they cannot claim exclusion of their respective shares in the property from the execution proceedings. Therefore, the Trial Court has rightly dismissed the interlocutory application. The Civil Revision Petition does not merit any consideration and accordingly, dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

सत्यमेव जयते

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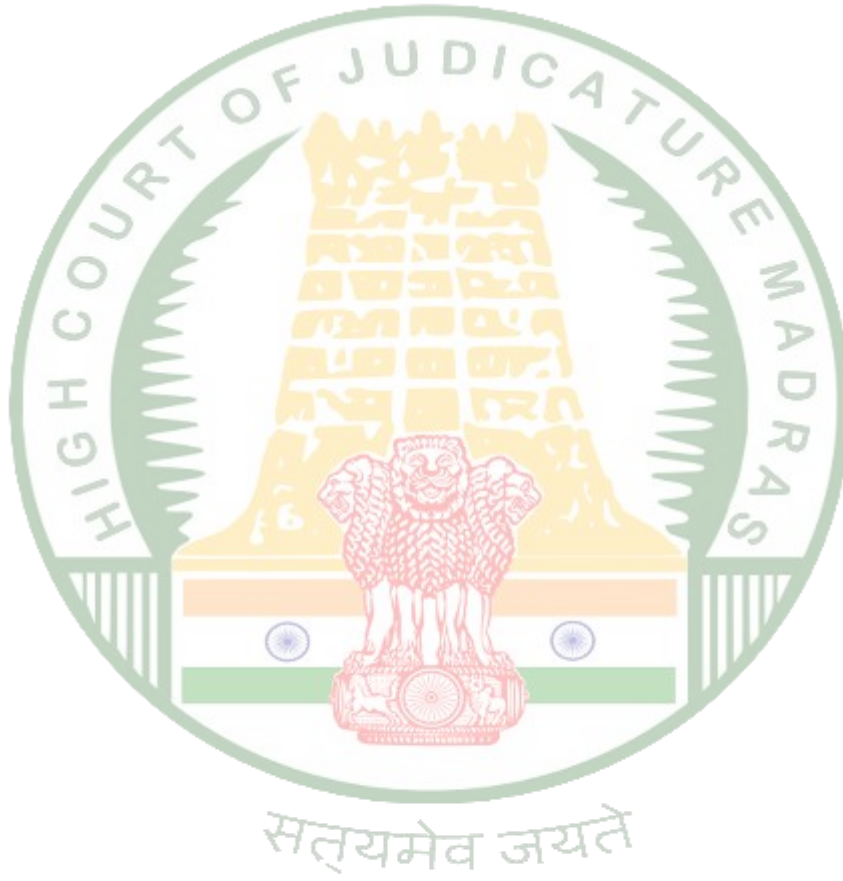
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To

The Principal District Judge
Villupuram.



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M.GOVINDARAJ, J.

TK



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