

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1455 of 2015
& M.P.No.1 of 2015

S.Thambi

.. Petitioner

Vs.

1.S.Mohan
2.C.Senguttuvan
3.V.Govindaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 30.10.2014 made in E.P.No.63 of 2014 in O.S.No.210 of 1996 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Asso.

For R1 : Mr.T.Sundaravadanam

For R2 & R3 : Not ready in notice

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ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 30.10.2014 made in E.P.No.63 of 2014 in O.S.No.210 of 1996 on the file of the II Additional Subordinate Judge, Coimbatore.

2.The petitioner/second defendant is the judgment debtor in O.S.No.210 of 1994 and second respondent in E.P.No.63 of 2014. The first respondent/plaintiff is the decree holder, who filed the suit for recovery of money. After contest, on 28.08.1998, the suit was decreed. Against that the petitioner filed A.S.No.66 of 2000. By the judgment and decree dated 24.06.2013, the said appeal was partly allowed by reducing the rate of interest from 36% to 12% p.a. The petitioner did not pay the amounts as per the decree. The first respondent filed E.P.No.63 of 2014 for sale of the property mentioned in the E.P for realising the decretal amount of Rs.3,83,323.56/- due as on that date. The first respondent gave a value of the property as Rs.5,00,000/-.

3.The petitioner filed counter affidavit and contended that calculation given by the first respondent with regard to the amounts due is not correct. The property is worth more than Rs.70,00,000/-. The petition premises is consisting of 4 portions. 3 portions are occupied by the tenants and one portion has fallen vacant. Only a portion of the property is sufficient to satisfy the decretal amount and prayed for dismissal of the E.P.

4.By the order dated 30.10.2014, the learned Judge considering the materials on record, contention of the learned counsel for the petitioner and first respondent, ordered the E.P for testing separately each portion and directed the petitioner and first respondent to pay the batta within 7 days and posted the E.P to 01.12.2014.

5.Against the said order dated 30.10.2014, made in E.P.No.63 of 2014 in O.S.No.210 of 1996, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner contended that the learned Judge committed an irregularity in ordering the sale of entire property when the sale of a portion of the property is sufficient to satisfy the amount claimed in the E.P. The petitioner has stated that for the property mentioned in the E.P, consisting of 4 portions, the petitioner has not given a value of each portion and has not stated that the sale of which portion will be sufficient to satisfy the decretal amount. The learned counsel for the petitioner also submitted that the petitioner is willing to pay the amounts due to the first respondent and settle the matter. The petitioner had

already deposited a sum of Rs.2,00,000/- to the credit of the E.P.No.63 of 2014.

7.Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

8.From the materials available on record, it is seen that the learned Judge allowed the petition and posted the E.P on 01.12.2014 for testing each portion of the property separately. On ascertaining the value of each portion, the learned Judge has to pass orders as to whether the sale of one portion of the property is sufficient to satisfy the decretal amount or sale of the entire property is necessary to satisfy the decretal amount. In view of the order passed by the learned Judge that each portion has to be decided separately, it is open to the petitioner as well as the first respondent to file documents before the learned Judge with regard to the value of each portion through Court Ameen. On ascertaining the value of each portion, it is for the learned Judge to order the sale of sufficient portion of the property to realise the decretal amount. The learned Judge is directed to ascertain the value of each portion of the property within two months from the date of receipt of a copy of this order and pass suitable orders for sale. It is open

to the petitioner to approach the Execution Court for payment of the balance amounts and record full satisfaction of the decree passed in favour of the first respondent. The amounts should be settled within a period of two months and if the first respondent fails to settle the amount, the learned Judge is directed to proceed further in the E.P.

9. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2017

Index: Yes/No
gsa

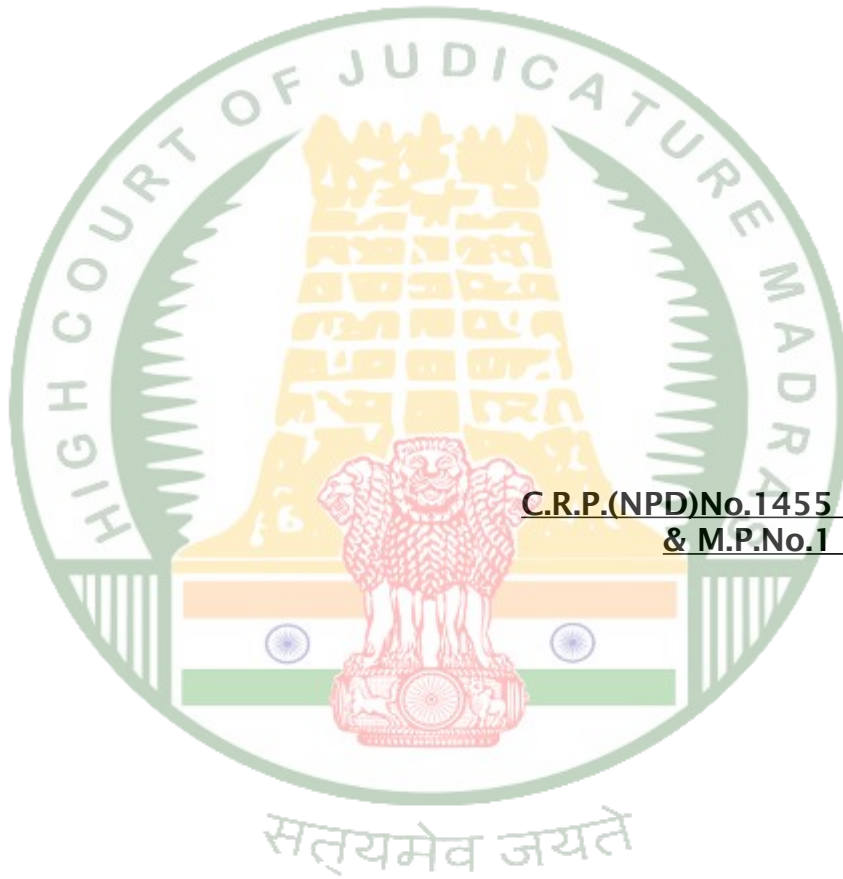
To

The II Additional Subordinate Judge,
Coimbatore.

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V.M.VELUMANI,J.

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