

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) Nos.3343 & 4921 of 2011
and CMP Nos.13019 & 13020 of 2017
and M.P.No.1 of 2011

Judgment reserved on 20.09.2017	Judgment pronounced on 09.10.2017
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CRP (NPD) No.3343 of 2011

1. N.Devarajan
 2. Tmt.Ruckmani Ammal (died)
 3.D.Vishnuvardhan ... Petitioners

Vs.

1.M/s.Nirmal Industries
 34, Krishnasamy Mudaliar Street,
 RS Puram, Coimbatore.
 2. R.Anandakumar
 3.P.R.Govindaswamy Gounder (died) ... Respondents

CRP (NPD) No.4921 of 2011

1. N.Devarajan
 2. Sabarigirinath ... Petitioners

Vs

1.M/s.Nirmala Engineering Works
 34, Krishnasamy Mudaliar Street,

RS Puram, Coimbatore

2. K.Nithyanandam

3. Mrs.N.Pushpaveni

4. N.Harun Prasath

5. Mrs.N.Ajeetha

... Respondents

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Civil Procedure Code against the fair and final order dated 22.06.2011 made in E.A.Nos.913 & 914 of 2003 in E.P.No.301 & 291 of 2001 in O.S.No.204 of 1983 and O.S.No.1340 of 1978 respectively on the file of Subordinate Court, Coimbatore.

For Petitioners : Mr.K.Subramanian,
in both CRPs Senior Counsel for
Mr.J.Pothiraj

For Respondents : Mr.M.S.Krishnan,
in both CRPs Senior Counsel for
M/s.Sarvabhauman Associates
for R1

Mr.P.K.Rajagopal
for R3 to R5 in
CRP (PD) No.4921/2011
R-2 died in
CRP (PD) No.4921/2011
R-3 died in
CRP (PD) No.3343/2011

COMMON ORDER

These Civil Revision Petition have been filed against the fair and final order dated 22.06.2011 made in E.A.No.913 & 914 of 2003 in E.P.No.301 & 291 of 2001 in O.S.No.204 of 1983 and

O.S.No.1340 of 1978 respectively on the file of Subordinate Court, Coimbatore.

2. The petitioners in both the CRPs are applicants in E.A.Nos.913 & 914 of 2003 in E.P.Nos.301 & 291 of 2001 in O.S.Nos.204 of 1983 & 1340 of 1978. The respondents in E.A.Nos.913 & 914 of 2003 are petitioners in E.P. and defendants in the suit.

3. The petitioners filed the above suit for determination of tenancy and ejectment of respondent. At the time of filing of the suits, according to the petitioners, they did not know the constitution of first respondent and its partners. The petitioners described the first respondent as partnership firm and subsequently found to be incorrect. Trial in the suit proceeded under a mistake of fact till 1998. The first respondent's partners initially were one R.Krishnasamy Naidu and N.Ramansamy Gounder who took on the lease of vacant site, being the properties in the suit. Without the knowledge of the petitioners, they appeared to have divided their interest and Nirmala Engineering Works came to be managed by R.Krishnasamy Naidu and Nirmala Industries was managed by

N.Ramasamy Gounder. The first respondent firm is for a fixed period of five years with Regn.No.1706/1950. The first respondent filed petition under Section 9 of the Chennai City Tenants Protection Act. By the order dated 22.06.1993, the amount to be deposited by the first respondent was quantified and the first respondent was directed to deposit the said amounts within two years from the date of that order. On 17.06.1995, the first respondent, i.e. Nirmala Engineering Works deposited the amounts so quantified. On that date, there was no firm known as Nirmala Engineering Works. The second respondent in CRP (PD) No.4921 of 2011 registered the firm Nirmala Engineering Works only on 26.06.1995 with new partners. Similarly, as far as Nirmala Industries is concerned, N.Ramasamy Gounder died on 31.03.1990 leaving C.N.Ramaswamy and other partners. The partnership is at will and on the death of N.Ramasamy Gounder, the firm ceased to be in existence. Both the firms were newly constituted one and both the firms are not entitled to get the benefit under Tamil Nadu Chennai City Tenants Protection Act. Only after depositing the amounts on 17.06.1995, the death of N.Ramasamy Gounder was informed to Registrar of Firms and two days after deposit of money into the court, the firm was renewed from the year 1992 to 1995. The respondents have suppressed the

material fact and played fraud on the court and order passed in the application filed by the first respondent under Section 9 of the Chennai City Tenants Protection Act is nullity. The petitioners came to know of this fact only recently. The first respondent obtained order by misleading the court. The petitioners counsel issued notice to the counsel for the respondent to produce all the relevant records relating to registration of firm and names of the partners. The first respondent's Advocate did not comply with the same. The first petitioner obtained certified copies of the relevant records and he came to know about the fraud played by the respondent in obtaining order in the application filed under Section 9 of the Chennai City Tenants Protection Act and hence the said order is nullity. The petitioners, in the circumstances filed E.A Nos.913 & 914 of 2003 praying to hold an enquiry under Section 47 of CPC to declare that the order passed in I.A.Nos.473 of 1983 and 220 of 1979 as nullity and to pass necessary further orders.

4. The respondents filed counter and denied various allegations made by the petitioners. According to the respondents, they filed petition under Section 9 of the Chennai City Tenants Protection Act and court determined the minimum extent required

by respondents and fixed the market value of the said extent. By order dated 22.06.1993, court granted two years time to deposit the amount so determined. Respondents re-delivered the excess land to the petitioners. Respondents deposited the amounts as ordered by the court. The petitioners filed application for withdrawing the amounts. The respondents opposed the same on the ground that without executing sale deed, the petitioners are not entitled to withdraw the amount. The petitioners withdrew the said application for payment but did not execute the sale deed. The respondents filed E.P.Nos.301 & 291 of 2001 to execute the order. The petitioners filed I.A.Nos.1221 and 1222 of 1999 on the very same ground now raised. Both the I.As were dismissed and CRP Nos.422 & 423 of 2002 were dismissed by this Court. The SLP Nos.10726 & 10937 of 2002 filed by the petitioners were also dismissed by the Hon'ble Apex Court on 09.07.2002. The respondents have not suppressed any material fact and has not committed any fraud. The petitioners are not entitled to the relief sought for in the present application and the present application is not maintainable and is devoid of merits.

5. Before the learned Judge, first petitioner in both the CRPs was examined as PW1 and marked Exs.P1 to P10 in E.A.No.914 of 2003. The second respondent in CRP No.3343 of 2011 was examined as RW1 and marked Exs.R1 to R5 in E.A.No.913 of 2003. The second respondent in CRP No.4921 of 2011 was examined as RW1 in E.A.No.914 of 2003 and marked Exs.R1 to R3.

6. The learned Judge dismissed both the E.As holding that the relief sought for by the petitioners are not maintainable under Section 47 CPC and remedy available to the petitioners is only by way of appeal. The learned Judge further held that as per lease deed marked as Exs.P3 to P5, the first respondent Partnership Firms were continued by partners at various times from the time of R.Krishnasamy Naidu and N.Ramasamy Gounder.

7. Against the said order of dismissal dated 22.06.2011 made E.A.No.913 & 914 of 2003 in E.P.No.301 & 291 of 2001 in O.S.No.204 of 1983 and O.S.No.1340 of 1978 respectively, the present two Civil Revision Petitions are filed.

8. The learned Senior Counsel appearing for the petitioners submitted that the first respondent Partnership Firm in both the CRPs were not lessees of the suit property. The property was leased out to R.Krishnasamy Naidu and N.Ramasamy Gounder, two individuals in their individual capacity. The said persons were carrying on business in partnership firm. By mistake, the petitioners filed suit against the partnership firm for ejectment. In the plaint itself, the petitioners have stated that they are not aware of the partners. When the first respondent in the respective suits filed application under Section 9 of the Chennai City Tenants Protection Act, they were not tenants of the petitioners or successors in interest of the original lessee. The petitioners came to know subsequently that, when the first respondent deposited the amounts determined by the court, there was no partnership firm. Both the partnership firms were re-constituted subsequently. The first respondent, suppressing this fact, deposited the amounts.

9. As far as Nirmala Engineering Works is concerned, there were only two partners and one of the partner died pending application filed under Section 9 of the Chennai City Tenants

Protection Act. The first respondent firm did not inform the death of one of the partner to the court. The partnership firm cannot exist with only one partner. Both the partnership firm became extinct by lapse of time and by failure to re-constitute the partnership firm and registered the same with Registrar of Firms. The first respondent partnership firm is not successor of interest of original lessee. They are not lessees as per Section 2 (4) of Chennai City Tenants Protection Act. In the circumstances, the petitioners filed I.A.Nos.1221 & 1222 of 1999 to set aside the order passed by the court in the application filed under Section 9 of the Act. The learned counsel appearing for the petitioner before the Trial Court also gave notice under Order 12 Rule 8 CPC to produce the documents with regard to registration of firms and furnish the names of the partners. The learned counsel for the respondents before the Trial Court failed to produce such documents.

10. The learned Judge, on erroneous consideration of law and facts, dismissed both the applications by order dated 26.06.2001. Two CRP Nos.422 & 423 of 2002 filed by the petitioners were also dismissed by this Court on the ground that the petitioners have not produced any document to show that the first respondent is not

successor in interest of original lessee. This Court also observed that it is open to the petitioners to obtain certified copy of the Registration Certificate. The petitioners applied for the same and also filed SLP before the Hon'ble Apex Court challenging the order of this Court dated 12.04.2002 made in CRP Nos.422 & 423 of 2002 dismissing the two CRPs. By the time, SLPs came up for admission, petitioners obtained certified copy of the Registration Certificate and sought permission of the Hon'ble Apex Court to withdraw the SLPs with liberty to approach the Trial Court for appropriate relief based on the certified copy so obtained. The Hon'ble Apex Court dismissed the SLPs with liberty to petitioners to approach the Trial Court.

11. As per the liberty given by the Hon'ble Apex Court, the petitioners filed present E.A Nos.913 & 914 of 2003 under Section 47 of CPC. The first respondent obtained order in the application filed by them under Section 9 of the Act by playing fraud on the court and suppressing material fact, the first respondent failed to bring it to the notice of the court that when order was passed determining the amount to be deposited and when the first respondent deposited the amount, there was no partnership firm.

The first respondent obtained order under Section 9 of the Act on the ground that they are the original lessees in respect of suit property. Exs.P3 to P5 clearly show that only R.Krishnasamy Naidu and N.Ramasamy Gounder were original lessees in their individual capacity and partnership firm was never lessees of the suit property. The petitioners, by mistake stated that first respondent partnership firm is the lessee in respect of suit property.

12. The first respondent, taking advantage of the mistake committed by the petitioners, obtained order by playing fraud on the court. Having come to know about the mistake committed by them, the petitioners withdrew their admission and filed present application to declare the order of the court as nullity. The party is entitled to seek declaration that trial court order is nullity and unexecutable on the ground that the same has been obtained by fraud. The petitioners are entitled to seek such relief even in the execution petition also. As per Section 47 CPC, the executing court has to decide the executability of the decree. In the present case, the petitioners, by both oral and documentary evidence proved that first respondent is not a lessee of the suit property and they are not successors in interest of original lessees. The learned Judge wrongly

interpreted the lease deed marked as Exs.P4 & P5. From these lease deeds, it is clear that only R.Krishnasamy Naidu and N.Ramasamy Gounder were lessees in their individual capacity and partnership firm carried on by them was not a lessee. The learned Judge erred in holding that original partnership was re-constituted after the death of the partners or retirement of partners. The learned Judge erred in holding that petitioners themselves admitted that first partnership firm are lessees. The learned Judge failed to see that the petitioners withdrew such admission and has substantiated their case by documentary evidence that only two individuals were lessees. The learned Judge failed to properly appreciate the scope of Section 47 CPC. As per Section 47 CPC, the executing court has power to decide the executability of the decree and is not correct in holding that order now challenged has become final and remedy available to the petitioners is only by way of appeal.

13. The learned Judge failed to see that there cannot be any estoppel when there was a mistake or ignorance as to the real state on things. In the present case, the petitioners have proved that by mistake and ignorance, they have stated that the first respondent is

the lessee. Only when they came to know about the mistake, they found out the fraud played by the respondents. The learned Senior Counsel submitted that the partnership firm was for a fixed period of five years and after expiry of five years, the partnership firm was not extended for further period. On the date of passing of final order and on the date when the amounts were deposited, partnership firm was not in existence and the partnership firm was registered subsequent to deposit of amounts by inducting new partners.

14. As per Section 69 (2) of the Partnership Act, unless a partnership firm is registered, the partnership firm cannot enforce against any third party and only a person shown as partners can sue or to be sued. In the present case, in respect of Nirmala Engineering Works, the first respondent in CRP No.4921 of 2011, the second respondent K.Nithyanandhan deposed as partner without any valid registration of firms. The said firm was not registered from 1978 to 1993.

15. The learned Senior Counsel, in support of his contention relied on the following judgments -

- (i) 1994 (1) SCC 53
- (ii) AIR 1979 KER 194
- (iii) AIR 1984 All 169
- (iv) AIR 1995 SC 1205
- (v) AIR 1965 SC 1812
- (vi) 2009 (5) MLJ 1336
- (vii) 1998 LW 99
- (viii) 2003 CTC 423
- (ix) 2001 (1) CTC 10

16. The learned Senior Counsel appearing for the first respondent in both the CRPs contended that partnership firm once registered continues to be a registered partnership firm and when new partners are inducted, it is re-registered showing the names of partners. The petitioners are raising issue of non-registration after 50 years of registration of firm. The petitioners have filed Registration Certificate only with regard to Nirmala Engineering Works and has not filed any Registration Certificate with regard to Nirmala Industries. The petition filed in CRP No.3343 of 2011 for receiving additional document is not maintainable. Section 69 of Partnership Act is not applicable to the facts of the present case.

The petitioners were not claiming any contractual claim but are claiming a statutory right. The petitioners have not challenged the order dated 22.06.1993 made in I.A.No.473 of 1983 and I.A.No.220 of 1979 whereby the first respondent was permitted to deposit the market value of the land necessary for carrying on their business. The first respondent deposited the amount so determined and also re-delivered the excess land to the petitioners. Having taken delivery of excess land as per the orders of the court dated 22.06.1993, it is not open to the petitioners to allege that the decree is nullity. The earlier application in I.A.Nos.1221 & 1222 of 1999 were dismissed by the learned Judge and CRP Nos.423 & 422 of 2002 challenging the said order were also dismissed by this Court confirming the orders passed in I.A.Nos.1221 & 1222 of 1999 filed by the petitioners. SLPs filed by the petitioners were also dismissed.

17. The learned Senior Counsel, in support of his contention relied on the following judgments -

- (i) 2013 (5) SCC 470
- (ii) 2011 (10) SCC 420
- (iii) 2014 (15) SCC 144

(iv) 1992 (4) SCC 683

(v) 1962 (1) SCR 358

18. The learned counsel for the respondents 3 to 5 contended that the contention of the petitioners that by mistake, they mentioned the partnership firm as lessee and filed suit and only subsequently they came to know about the mistake and that respondents took advantage of the mistake and by suppressing and playing fraud, they obtained orders are contrary to the facts. Nirmala Engineering works and Nirmala Industries had two partners viz. R.Krishnasamy Naidu and N.Ramasamy Gounder. The present partners are legal heirs of original partners and relatives of original partners. It is not correct to state that partnership firm was not in existence after expiry of five years from 01.07.1950. Both the partnership firms were re-constituted when the partners died and partnership firm was in existence without any interruption from the year 1950 onwards. In view of the same, there is no fraud played by the respondents in obtaining orders under Section 9 of the Act and there is no suppression of material fact by the respondents. Earlier proceedings starting with I.A.Nos.1221 & 1222 of 1999 before the Trial Court culminating in SLP Nos.10726 & 10937 of

2002 ended against the petitioners rejecting their contention. The petitioners have come up with the present application under Section 47 CPC which is not maintainable. The scope of Section 47 is very limited and executing court cannot go beyond the decree and has no power to declare a decree as nullity when the same was passed by a competent court. Only in exceptional cases, when the court passes a decree which did not have inherent jurisdiction to pass such decree, the decree can be declared as nullity. This court has only supervisory power under Section 115 of CPC and can be exercised only in exceptional cases where the court below failed to exercise jurisdiction vested on it or acted illegally or with material irregularity in exercise of such jurisdiction. The learned Judge considered all the materials and dismissed the application by giving cogent and valid reasons.

19. In support of his contention, the learned counsel relied on the following judgments -

(i) 2001 (6) SCC 534

(ii) 2006 (3) LW 827

(iii) 2014 (3) CTC 10

(iv) 2014 (1) MLJ 851

(v) 2016 (4) CTC 496

(vi) 2017 (5) SCC 37

(vii) 2009 (1) MLJ 999

(ix) 2003 (6) SCC 659

20. Heard the learned Senior Counsel for the petitioners, first respondent as well as the learned counsel appearing for the respondents 3 to 5 and perused the materials available on record.

21. The learned Senior Counsel for the petitioners, first respondent and the learned counsel for the respondents 3 to 5 elaborately argued the matter and extensively referred to documents filed in the typedset of papers as well as the judgments relied on by them.

22. The short point to be decided in both the Civil Revision Petitions is whether the respondents have obtained order dated 22.06.1993 by suppression of material fact and by playing fraud on the court and whether the executing court can declare the said decree as nullity and void *ab initio*. The relevant facts necessary to decide the issue is as follows -

Admitted facts :

1. The suit property originally belonged to grandfather of petitioners and they inherited the same.
2. R.Krishnasamy Naidu and N.Ramasamy Gounder became lessee of the suit property. They were carrying on the partnership business in the name and style of Nirmala Industries. They divided themselves in the business and Nirmala Engineering Works came into existence and each of them constituted separate partnership firm, the first respondent in CRP No.3343 of 2011.
3. The petitioners filed O.S.No.205 of 1983 and O.S.No.1340 of 1978 against the first respondent in CRP No.4921 of 2011 for determination of tenancy and ejection of first respondent from respective suit property.
4. The first respondent filed application under Section 9 of the Chennai City Tenants Protection Act.
5. By order dated 22.06.1993, the Trial Court determined the minimum extent of land required for first respondent to carry on the business determining the market value of the said extent granting two years time to the first

respondent to deposit the amounts together with interest @ 6% per annum and directed the first respondent to deliver possession of excess land to the petitioners.

6. The first respondent complied with both the conditions. The petitioners did not execute the sale deed in favour of the first respondent and the first respondent in CRP No.3343 of 2011 filed E.P No.301 of 2001 and first respondent in CRP No.4921 of 2011 filed EP No.291 of 2001.
7. The petitioners filed I.A.Nos.1221 & 1222 of 1999 contending that the first respondent in both the CRPs are not entitled for the relief under Section 9 of the Act and the first respondent in both the CRPs should not compel execution of sale deed.
8. By common order dated 26.06.2001, both the applications were dismissed. CRP Nos.422 & 423 of 2002 filed by the petitioners against the above said order were also dismissed by this court vide order dated 12.04.2002. The Hon'ble Apex Court, by order dated 09.07.2002 dismissed the SLP Nos.10726 & 10937 of

2002 filed by the petitioners as withdrawn with liberty to the petitioners for filing requisite partnership registration certificate before the Trial Court.

Disputed facts :

1. Originally, the lease was granted to R.Krishnasamy Naidu and N.Ramasamy Gounder in their individual capacity. The lease was not granted to partnership firm. Both the partnership firms were not in existence when application under Section 9 of the Act was filed, when the said application was allowed and when the first respondent deposited the amount.
2. Partnership firm were registered subsequent to deposit of amounts.

Conclusion :

23. The petitioners have filed present E.A Nos.913 & 914 of 2003 under Section 47 CPC for a relief that order dated 22.06.1993 passed in application filed under Section 9 of the Act is not executable. The petitioners have come out with the present applications on the ground that the first respondent partnership firm

are not lessees of the suit property and they are not entitled to relief under Section 9 of the Act. The first respondent took advantage of the mistake committed by the petitioners and claim to be the lessee. By suppressing the material fact that only individuals were lessees and not partnership firm and playing fraud on the court, obtained order dated 22.06.1993. On the date of such order, partnership firm was not in existence. The petitioners can challenge such order as nullity in view of the fraud played by the first respondent and executing court has power under Section 47 CPC.

24. On the other hand, the contention of the respondents are that only partnership firm is the lessee and partnership continued without any interruption. Whenever partnership firm were re-constituted, the same was registered with Registrar of Firms furnishing the names of the partners. The petitioners have suffered a decree and having acted upon as per part of the decree by taking possession of excessive land ordered to be delivered to them, now cannot challenge the other part of the decree as nullity. The petitioners have recognised first respondent as lessee from the beginning and receiving rent from the first respondent. The

executing court has no power to go beyond the decree or has no power to declare the decree as nullity. It is well settled that executing court cannot go beyond the decree and has to execute the decree. At the same time, executing court has power under Section 47 CPC to decide the issue with regard to execution of the decree. In this context, the contention of the learned Senior Counsel for the petitioners that executing court can declare the decree as nullity when the same was obtained by playing fraud on the court and the judgment debtor has right to challenge the said decree as nullity at any stage including in execution proceedings has considerable force. The petitioners seek relief under Section 47 CPC on the ground that the first respondent in both the CRPs are not lessees or successors in interest of original lessees and the first respondent in both the CRPs, according to the petitioners are not lessees as per Chennai City Tenants Protection Act and therefore they are not entitled to relief under Section 9 of the Act. Section 2 (4) of the Act which defines the tenants reads as follows -

2 (4) 'Tenant in relation to any land -

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes -

(a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that -

(1) such person was not entitled to the rights under this Act by reason of the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972) or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection [Amendment] Act, 1972 (Tamil Nadu Act 4 of 1972) disentitled such person from claiming the rights under this Act and

(c) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii) (a) of (ii) (b),

but does not include a sub-tenant or his heirs]

25. By order dated 12.04.2002 made in CRP No.423 of 2002, this Court held as follows -

“2. Learned counsel for the petitioner, however contended that the petitioner had issued notice to the respondent to produce the registration certificate to establish that they are the successors in interest of the original defendant and the respondent failed to comply with the same, and as such, an adverse inference has to be drawn.

3. I am unable to agree with the said contention of the learned counsel for the petitioner, since it cannot be said that the respondent is in exclusive possession of the relevant documents. It is always open to the petitioner to apply for the certified copy of the registration of firms from the Registrar of Firms and produce the same before the Court. Shirking his responsibility, the petitioner has simply summoned the respondent to produce the document and now seeks to draw an adverse inference, which cannot be done.

26. The petitioners challenged the said order by filing SLP Nos.10726 & 10937 of 2002. At the time of admission, the learned

counsel for the petitioners sought permission to withdraw the SLPs with liberty to file requisite partnership Registration Certificate before Trial Court. The Hon'ble Apex Court passed the following order -

Learned counsel for the petitioner states that the requisite partnership certificate which was sought to be called for is now available with the petitioner and the petitioner shall be filing the same in the Trial Court. That liberty is allowed to the petitioner and the special leave petitions are dismissed as withdrawn.

27. Based on the above order of this court dated 12.04.2002 and the order of the Hon'ble Apex court dated 09.07.2002, the petitioners have filed E.A.Nos.913 & 914 of 2002 in the respective EPs.

28. The issue before the executing court is whether the decree dated 22.06.1993 granted in applications filed under Section 9 of the Act is obtained by suppression of material facts and by playing fraud on the court. The executing court ought to have considered and decided -

(a) Whether the lease was for partnership firm and first respondent was successor in interest of original lessee.

(b) Whether the partnership firm was in existence when application under Section 9 of the Act was filed, when the order dated 22.06.1993 was passed, when the first respondent deposited the amounts in the year 1995 (or)

(c) whether the first respondent partnership firm came into force only after registration of firm in the year 1995.

29. The executing court has failed to properly consider Exs.P3 to P9 and order of the Hon'ble Apex Court dated 09.07.2002 marked as Ex.P10 and also Exs.R1 to R3 in proper perspective. The executing court has failed to exercise its power properly in failing to decide the issue whether the first respondent played fraud on the court or not. The reasoning given by the executing court is not a valid one. In the result, the impugned orders of the executing court is liable to be set aside and they are accordingly set aside. The matters are remanded back to executing court for fresh disposal on

merits with a direction to give a specific finding whether the first respondent has played fraud on the court and obtained order dated 22.06.1993 or not.

30. In view of the above order passed in both the Civil Revision Petitions, two Civil Miscellaneous Petitions to receive the additional documents are closed. It is open to the petitioners to take appropriate application before the executing court for filing and marking the documents, if they so desire or advised. If any such application is made, the executing court is directed to decide the same on merits, after giving opportunity to the respondents to file their objection and after hearing the parties, pass orders on merits and in accordance with law.

31. In view of the well settled legal preposition with regard to decree being nullity, when the same is obtained by fraud, a judgment debtor can challenge the decree as nullity at any stage including in execution petition, if the same is obtained by fraud and limited scope of Executing Court in deciding the application under Section 47 CPC. In view of the above, the relevant portion of the judgments relied on by the parties are not extracted in the order.

32. With the above direction, both the Civil Revision Petitions are disposed of. No costs. Consequently connected Miscellaneous Petitions in M.P.No.1 of 2011 is also closed.

33. The learned Subordinate Judge, Coimbatore is directed to dispose of the matter on merits, without being influenced by the orders already passed and the order of this Court, as expeditiously as possible, not later than four (4) months from the date of receipt of a copy of this order.

09.10.2017

rg
Index: Yes/No

Note : Registry is directed to return all the original records to the lower court forthwith.

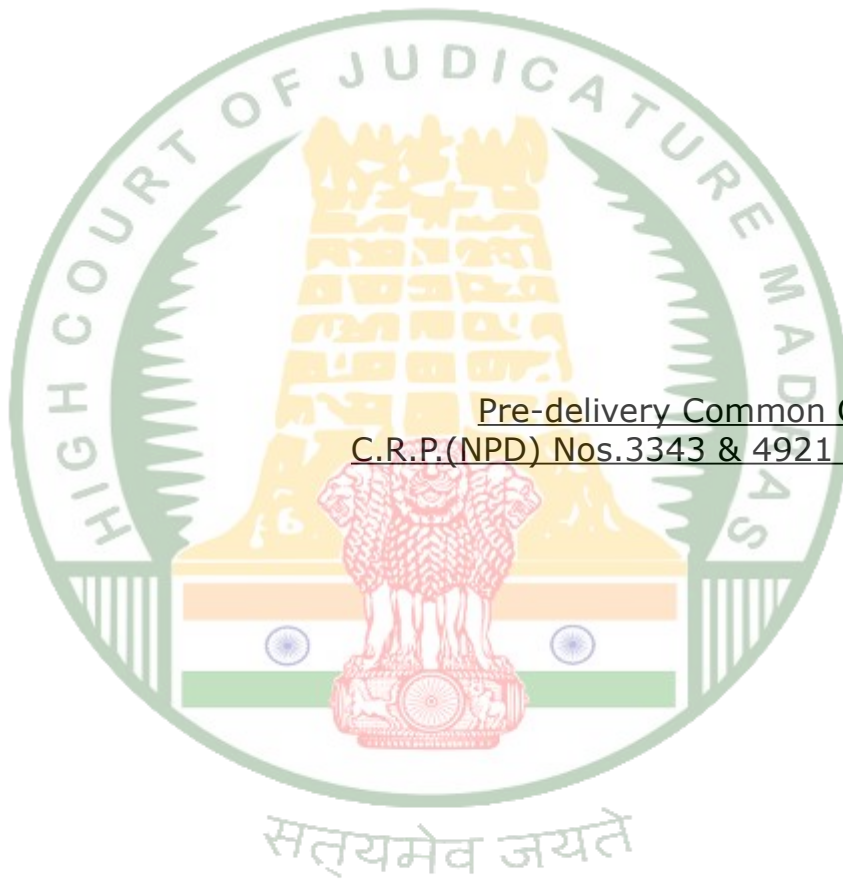
Issue order copy by 11.10.2017

To

- 1.The Subordinate Court, Coimbatore.
- 2.The District Munsif Court, Coimbatore.

V.M.VELUMANI, J.

rgr



Pre-delivery Common Order in
C.R.P.(NPD) Nos.3343 & 4921 of 2011

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09.10.2017