

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.4124 of 2011
and
M.P.No.1 of 2011

Karupudaiyar

.. Petitioner

vs

Mahalingam

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 4.10.2010 in E.A.No.129 of 2010 in E.A.No.212 of 2005 in E.P.No.5 of 2005 in O.S.No.183 of 1976 on the file of the District Munsif-cum-Judicial Magistrate, Thittakudi.

For Petitioner : Mr.V.Anand

For Respondents : No Appearance

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ORDER

This revision is directed against the order of the learned District Munsif-cum-Judicial Magistrate, Thittakudi in E.A.No.129 of

2010 in E.A.No.212 of 2005 in E.P.No.5 of 2005 in O.S.No.183 of 1976 dated 04.10.2010, dismissing the petition filed by the petitioner seeking joint trial of O.S.No.15 of 2000 and E.A.No.212 of 2005.

2. The petitioner is the plaintiff in the suit. He filed E.P.No.5 of 2005 for delivery of the property pursuant to the final decree passed in the suit being O.S.No.183 of 1976.

3. The petitioner filed E.A.No.129 of 2010 alleging that pursuant to the final decree passed in the suit, on 24.3.2005 through Court he had taken delivery of his share. However, the respondent, who is third party had filed E.A.No.212/2005 seeking to deliver the property to him. The respondent had filed O.S.No.15 of 2000 for declaration arraying the petitioner as first defendant. The property sought for delivery by the respondent in E.A.No.212 of 2005 and the property mentioned in O.S.No.15 of 2000 are one and the same. If the suit and the Execution Application were tried separately, there is every possibility of rendering two decisions. Therefore, it is necessary to order joint enquiry of O.S.No.15 of 2000 and E.A.No.212 of 2005.

4. Resisting the petition, the respondent filed counter stating

that if O.S.No.15 of 2000 and the Execution Petition were tried jointly, it will take long time to reach the conclusion. Further, the petitioner was in possession of the property belonging to the respondent and enjoying the mesne profits. If the respondent get favourable order in E.A.No.212 of 2005, there is no need to get along the suit O.S.No.15 of 2000. Since the respondent is not party in O.S.No.183 of 1976, the decree passed therein will not bind the respondent and if both O.S.No.15 of 2000 and E.A.No.212 of 2005 tried separately, there is no possibility of rendering two decisions. Hence prayed for dismissal of the petition.

5. Upon consideration of the rival submissions, the Executing Court dismissed E.A.No.129 of 2010. Aggrieved by the same, the petitioner has filed the present revision.

6. Challenging the impugned order, the learned counsel for the petitioner submitted that the Executing Court failed to see that the power of execution through a separate power under which the Executing Court can go behind the decree only under very limited circumstances and it does not preclude the Court from trying the suit and the execution proceedings jointly in as much as the properties

subject matter of the earlier suit and execution proceedings or the very properties in the subsequent suit in O.S.No.15 of 2000. He would submit that the Executing Court failed to see that the execution proceedings in E.P.No.5 of 2005 in O.S.No.183 of 1976 and O.S.No.15 of 2000 filed by the respondent are all pending before one and the same Court and decree passed in O.S.No.15 of 2000 would affect E.P.No.5 of 2005 and vice versa.

7. Despite service of notice, the sole respondent has not entered appearance.

8. I have considered the submission made by the learned counsel for the petitioner and also perused the materials available on record.

9. The point that arises for consideration is whether the Executing Court was right in dismissing E.A.No.129 of 2010.

10. The grievance of the petitioner is that pursuant to the final decree passed in I.A.No.858 of 1999, he had filed E.P.No.5 of 2005 for delivery and on 24.3.2005 delivery was effected. However,

the respondent, who is third party to the Execution Proceedings filed E.A.No.212 of 2005 seeking delivery of the property from the petitioner. The respondent had also filed suit in O.S.No.15 of 2000 qua the property mentioned in E.A.No.212 of 2005. Since the property involved in E.A.No.212 of 2005 and O.S.No.15 of 2000 are one and the same, the petitioner filed E.A.No.129 of 2010 seeking to conduct joint enquiry in both the proceedings.

11. The Executing Court dismissed E.A.No.129 of 2010 mainly on the ground that since the suit and the execution proceedings are different, the same cannot be tried jointly.

12. It appears that the respondent filed E.A.No.212 of 2005 seeking delivery of the property, which was taken delivery by the petitioner in E.P.No.5 of 2005. Admittedly, the respondent was not a party in E.P.No.5 of 2005. Apart from filing E.A.No.212 of 2005, the respondent had also filed O.S.No.5 of 2000 and the said suit is still pending. The subject matter of properties in E.P.No.5 of 2005 are the properties shown in O.S.No.15 of 2000. Moreover, E.P.No.5 of 2005 and O.S.No.15 of 2000 are pending in the same Court.

13. It is true that the Executing Court is bound by the decree and it cannot travel beyond the decree. Since the respondent initiated two parallel proceedings in respect of the same properties, if both the proceedings were tried together, it would avoid conflicting decision. No prejudice would be caused, if joint enquiry is conducted in E.A.No.212 of 2005 and O.S.No.15 of 2000. A decree passed in O.S.No.15 of 2000 would affect E.P.No.5 of 2005 and vice versa. Considering the facts and circumstances of the case, this Court finds that the Executing Court erred in dismissing E.A.No.129 of 2010 and it ought to have allowed E.A.No.129 of 2010 seeking joint enquiry in the interest of justice and also avoid conflicting decision.

14. In the result,

- (a) The Civil Revision Petition is allowed by setting aside the order in E.A.No.129 of 2010 in E.A.No.212 of 2005 in E.P.No.5 of 2005 in O.S.No.183 of 1976 on the file of the learned District Munsif-cum-Judicial Magistrate, Thittakudi.
- (b) The learned District Munsif-cum-Judicial Magistrate, Thittakudi is hereby directed to take up the suit being O.S.No.15 of 2000 and E.A.No.212 of 2005 in E.P.No.5

of 2005 in O.S.No.183 of 1976 on day-to-day basis without giving unnecessary adjournment to either parties and dispose the same within a period of sixty days from the date of receipt of a copy of this order.

(c) Both parties are hereby directed to give their fullest cooperation for early disposal of O.S.No.15 of 2000 as well as E.A.No.212 of 2005. No costs. Consequently, connected miscellaneous petition is closed.

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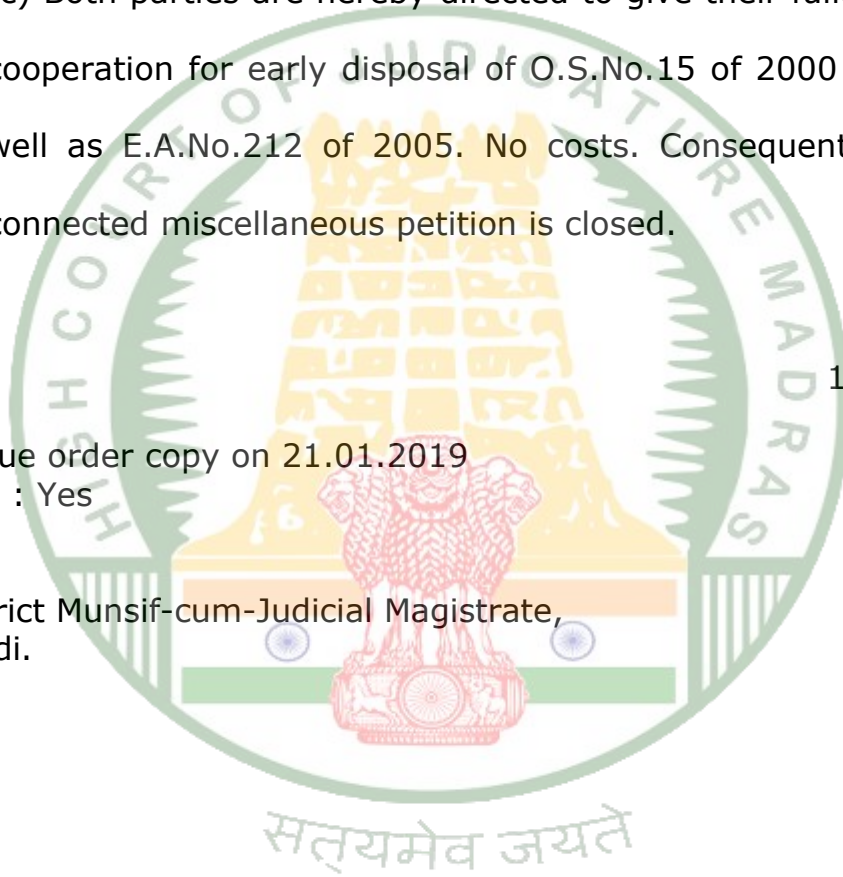
vs

Note: Issue order copy on 21.01.2019

Index : Yes

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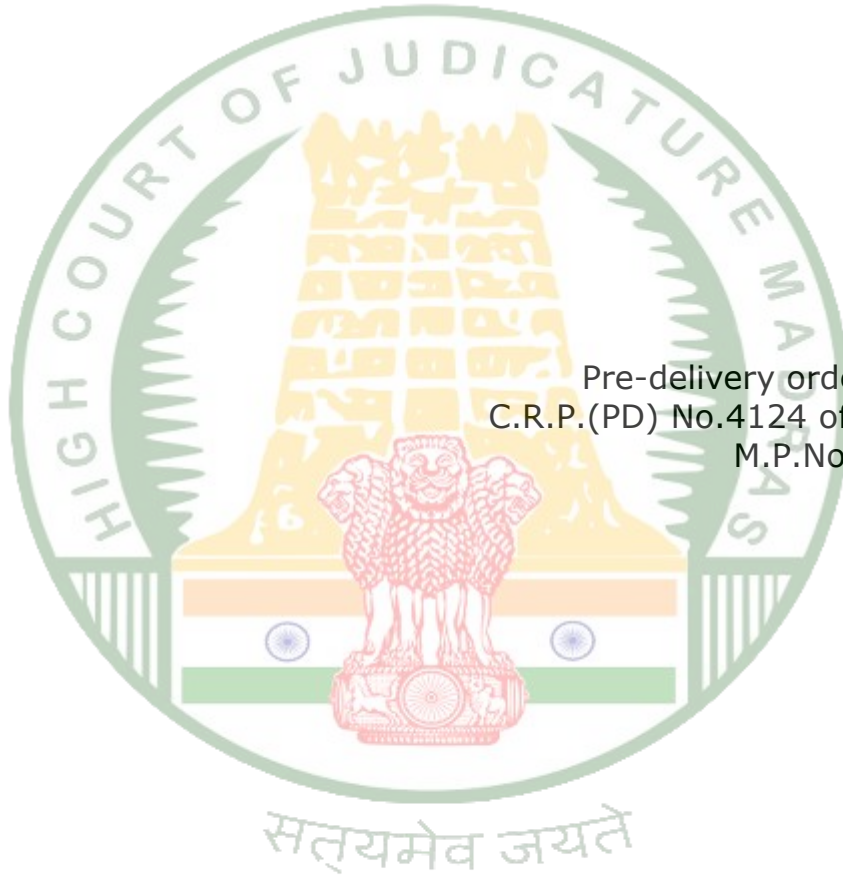
The District Munsif-cum-Judicial Magistrate,
Thittakudi.



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(PD) No.4124 of 2011 and
M.P.No.1 of 2011

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