

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4225 of 2011
& M.P.No.1 of 2011

S.Mayilsami

... Petitioner

Vs.

A.Velusami

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 17.08.2011 made in E.P.No.4 of 2009 in O.S.No.99 of 2007 on the file of the Subordinate Court, Pollachi.

For Petitioner : Mr.M.V.Krishnan

For Respondent : Mr.M.N.Balakrishnan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.08.2011 made in E.P.No.4 of 2009 in O.S.No.99 of 2007 on the file of the Subordinate Court, Pollachi.

2. The petitioner/defendant is the judgment debtor and respondent/plaintiff is the decree holder in E.P.No.4 of 2009. The respondent filed suit in O.S.No.99 of 2007 for recovery of money and obtained a decree. The petitioner did not pay the amount as per the decree. The respondent filed E.P.No.4 of 2009 for arrest and detain the petitioner in civil prison.

3. According to the respondent, the petitioner is having sufficient means to pay the amount decreed. He is having agricultural income and also having income from milk vending business.

4. The petitioner filed counter affidavit and denied that he is possessing agricultural land and doing milk vending business. He submitted that he is only a daily wage labour.

5. Before the learned Judge, the respondent examined himself as P.W.1 and marked three documents as Exs.P1 to P3. The petitioner examined himself as R.W.1 and marked medical certificate as Ex.R1 showing that he cannot do any work.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and Ex.P3/mortgage deed executed by the petitioner & his father mortgaging agricultural land and borrowed money for purchasing 10 cows, held that the petitioner is having sufficient means to pay the decretal amount and ordered arrest to detain the petitioner in civil prison.

7. Against the order dated 17.08.2011 made in E.P.No.4 of 2009, the present civil revision petition is filed by the petitioner/judgment debtor.

8. The contention of the learned counsel for the petitioner is that the petitioner is not having any income to pay the decretal amount, he is not owning any immovable property and he is not doing any milk vending business. The agricultural land and cows belong only to the petitioner's father. The petitioner is medically unfit to do any work and he substantiated the same by producing the medical certificate Ex.R1 issued by competent medical practitioner.

9. Per contra, the learned counsel for the respondent submitted that the respondent has proved that the petitioner is owning agricultural lands, 10 cows and he has sufficient means to pay the decretal amount by marking Exs.P1 to P3. The petitioner/judgment debtor has falsely claimed that he has no means only to defeat the interest of the respondent/deGREE holder.

10. Heard both sides and perused the materials on record.

11. From the materials on record, it is seen that the petitioner has not produced any document to show that the agricultural lands and cows belong only to his father. On the other hand, from Ex.A3 mortgage deed executed by the petitioner and his father, it is clear that both the petitioner and his father borrowed money jointly by mortgaging the agricultural lands to purchase cows.

12. According to the learned counsel for the petitioner, as per the proviso to Section 51(c) of C.P.C., the execution petition filed for arrest is not maintainable, as none of the clause mentioned therein applies to the case of the petitioner. The said contention has no merits.

13. As per the sub-clause (b) of Section 51 of C.P.C., it is clear that if the judgment debtor has means to pay the decretal amount or some substantial part thereof and refuses or neglects to pay the same, judgment debtor can be arrested and detained in civil prison.

14. The contention of the learned counsel for the respondent is that pending suit, attachment before judgment of immovable property was ordered in I.A.No.947 of 2007 filed by the respondent. The father of the petitioner did not make any claim that he is owner of the said property.

15. In view of the above, there is no merits in the contention of the learned counsel for the petitioner that the petitioner has no means to pay the decretal amount. In the present case, the respondent has proved that the petitioner has sufficient means to pay the decretal amount and therefore, E.P.No.4 of 2009 filed by the respondent for arrest and detention of the petitioner in civil prison is maintainable.

16. If the petitioner pays the decretal amount together with interest up to date, within eight weeks from the date of receipt of a

copy of this order, the order of the learned Judge made in E.P.No.4 of 2009 shall stand set aside.

17. With the above direction, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2017

Index:Yes/No
Speaking/Non-Speaking Order

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To

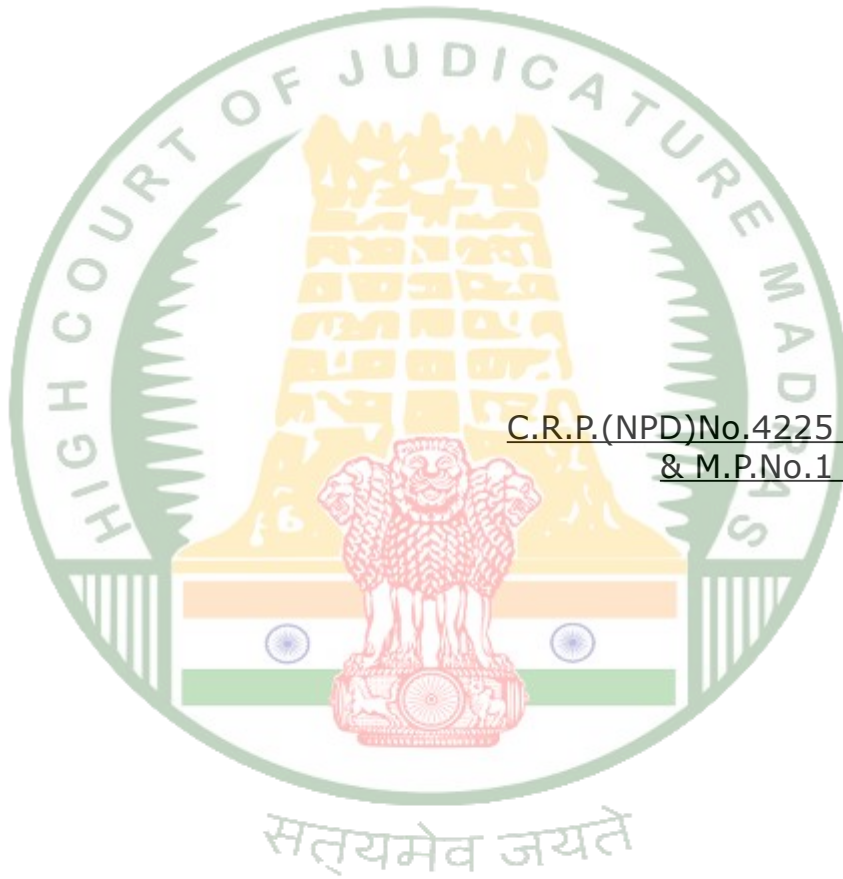
The Subordinate Judge
Pollachi.



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V.M.VELUMANI,J.

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