

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD) Nos.1383 & 920 of 2009
and M.P. No.1 of 2009

M. Govindan @ Govindaraju

.. Petitioner in
C.R.P. No.1383 of 2009

K. Chandra

.. Petitioner in
C.R.P. No.920 of 2009

Vs.

R.Maganlal

.. Respondent in
both CRPs.

PRAYER in C.R.P. No.1383 of 2009 : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.11.2008 made in E.P.No.23 of 2008 in O.S.No.296 of 2000 on the file of the Additional Sub Court, Salem.

PRAYER in C.R.P. No.1383 of 2009 : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.11.2008 made in E.P.No.24 of 2008 in O.S.No.606 of 2000 on the file of the Additional Sub Court, Salem.

For Petitioner : Mr.Zeenath Begum

For Respondent : Mr. Kalyanaraman

ORDER

These Civil Revision Petitions are filed against the fair and decretal order dated 20.11.2008 made in E.P.No.23 of 2008 in O.S.No.296 of 2000 and made in E.P.No.24 of 2008 in O.S.No.606 of 2000 on the file of the Additional Sub Court, Salem, respectively.

2. Issues involved in both the civil revision petitions are one and the same and hence, they are disposed of by this common order.

3. The petitioners/judgement debtors in both the civil revision petitions are the defendants and the respondent/decreed holder is the plaintiff in O.S.No.296 of 2000 and O.S. No.606 of 2000 respectively. The respondent filed the above suits for specific performance or in alternative, to refund the advance amount paid by the respondent. Both the suits were decreed directing the

petitioners to refund the advance amount of Rs.1,20,000/- in O.S. No.606 of 2000 and Rs.1,10,000/- in O.S. No.296 of 2000 with interest at the rate of 6% p.a. from the decree dated 20.01.2006. The petitioner did not refund the decretal amount. The respondent filed E.P. Nos.23 & 24 of 2008 in O.S.No.296 of 2000 and 606 of 2000 respectively under order 21 Rule 11 of C.P.C. for attachment and sale of the properties.

4. The petitioners filed counter affidavits and submitted that the respondent has not given any correct value of the properties and value of both the properties are more than Rs.10 lakhs, whereas the respondent has valued only at Rs.1,20,000/- and Rs.1,40,000/- for the suit properties filed in E.P. Nos.23 & 24 of 2008 respectively. The Properties measuring extent of 1782 sq.ft. in E.P. No.23 of 2008 and 1680 sq. ft. in E.P. No.24 of 2008. It is sufficient to sell each 250 sq.ft. of the lands in both the cases to realise the decretal amount.

5. The learned Judge considering the fact that the petitioners have not produced any evidence to substantiate their claim that the properties are worth more than of Rs. 10 lakhs and which portion of

the properties measuring 250 Sq.ft can be sold for realising the decretal amount, allowed both the E.Ps. and ordered sale of the properties.

6. Against the order dated 20.11.2008 made in E.P.No.23 of 2008 in O.S. No.296 of 2000 and E.P. No.24 of 2008 in O.S. No.606 of 2000, the present two civil revision petitions are filed by the petitioners/defendants.

7. The learned counsel for the petitioners reiterated the averments made in the counter affidavits filed in the execution petitions and contentions raised in the grounds of revision petitions. The learned counsel for the petitioners further submitted that the value of the properties can be determined only at the time of settlement of the proclamation of the sale. In support of his contention, he relied on the Hon'ble Apex Court Judgment reported in **2007 (2) CTD 826 [Sai Enterprises Vs. Bhimreddy Laxmaiah and another];**

*"9.....The duty cast upon the Court to
sale only such portion or portion thereof as is*

necessary to satisfy the decree is a mandate of the legislature which cannot be ignored. Similar, view has been expressed in S. Mariyappa (Dead) by L.R.s and others V. Siddappa and another, 2004(3) CTC 671: 2005 (10) SCC 235. The position was also highlighted in Balakrishnan V. Malaiyandi Konar (2006) (3) CTC 180:2006 (3) SCC 49."

8. Heard both sides and perused the materials available on record.

9. The learned Judge considering all the materials on record ordered sale of the immovable properties belonging to the petitioners. This is the first stage of the sale of the properties by the court. As rightly pointed out by the learned counsel for the petitioners, the value of the properties can be decided at the time of the settling proclamation of sale. In view of the various stages provided under Order 21 Rules 64 to 73 of C.P.C. for sale of the property, the order of the learned Judge ordering sale is not vitiated and the learned Judge has not committed any irregularity in ordering sale. At the time of settling proclamation of sale as per Order XXI Rule 66 CPC, it is open to the petitioners to produce evidence to substantiate their claim that the properties are worth

more than Rs.10 lakh and furnish the details of the portion measuring 250 sq.ft., which is sufficient to satisfy the decretal amount.

10. In the result, these Civil Revision Petitions are dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

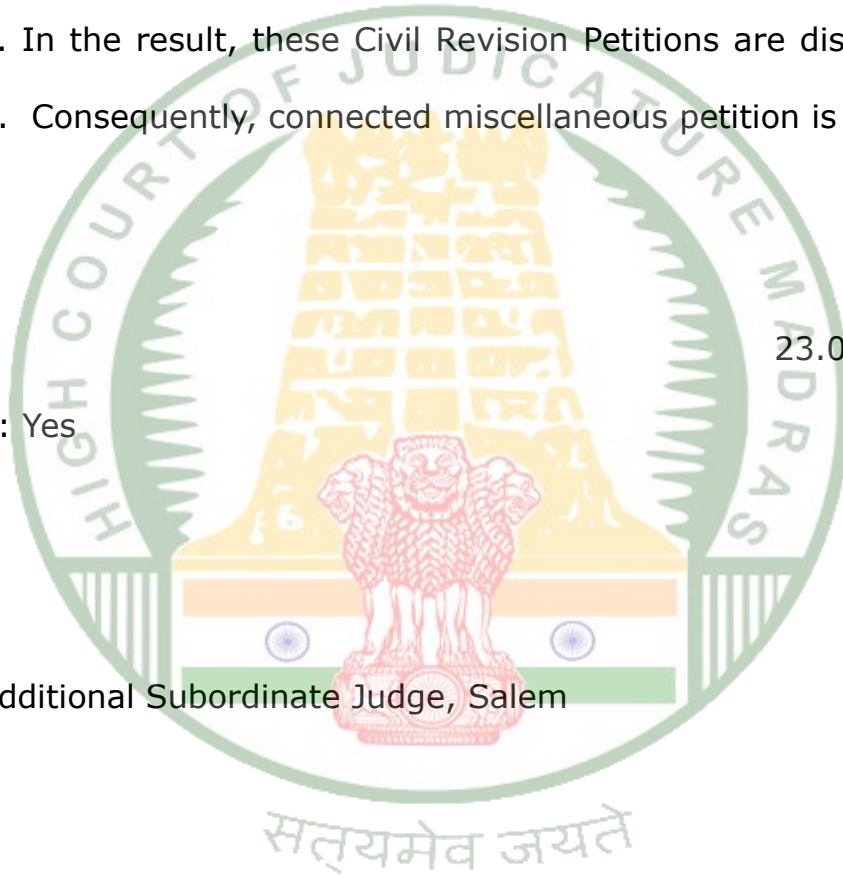
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Index : Yes

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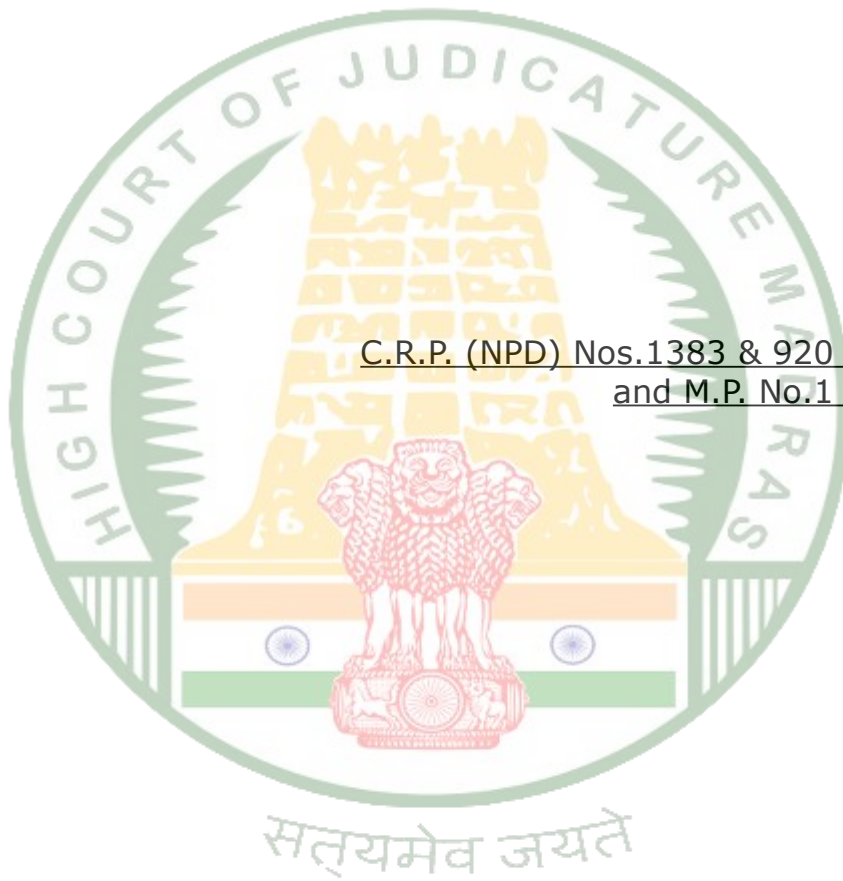
The Additional Subordinate Judge, Salem



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V.M.VELUMANI, J.

lbm/kj



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