

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1757 of 2012
& M.P.No.1 of 2012

Jeevarathinam

.. Petitioner

Vs.

1.Marimuthu
2.Patchayammal
3.Maragadham
4.Anandayee

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the order dated 11.04.2012 made in E.A.No.277 of 2007 in E.P.No.78 of 2005 on the file of the III Additional District Munsif Court, Puducherry.

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For Petitioner : No appearance

For Respondents : Mr.S.Ravee Kumar

ORDER

The Civil Revision Petition is filed against the order dated 11.04.2012 made in E.A.No.277 of 2007 in E.P.No.78 of 2005 on the file of the III Additional District Munsif Court, Puducherry.

2. The petitioner is the judgment debtor/defendant and respondents are the decree holders/plaintiffs in O.S.No.190 of 1996 on the file of the III Additional District Munsif Court, Puducherry. A preliminary decree was passed on 25.09.1998 and final decree was passed in the said suit on 03.04.2002. The respondents/decreed holders filed E.P.No.78 of 2005 for executing the decree. The petitioner filed counter statement in the said E.P. on 06.03.2006. The petitioner filed E.A.No.277 of 2007 under Section 47 of C.P.C., to dismiss the above said E.P stating that the property in question was never handed over to the petitioner.

3. According to the petitioner, the property is not in existence and the description of the property is vague and unidentifiable. The respondents, in collusion with the Court amina are trying to grab the property belonging to the petitioner.

4. The respondents filed counter affidavit and denied all the averments made in the affidavit filed in support of the said application and submitted that the same grounds raised by the petitioner were rejected in C.M.P.Nos.1079 of 2001 and 446 of 2002 in S.A.No.97 of 2001 filed before this Court.

5. Before the Execution Court, the petitioner examined himself as P.W.1 and one Elumalai, Court amina, was examined as P.W.2 and marked two documents as Exs.P1 and P2. The respondents did not let in any oral and documentary evidence.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, rejected all the objections raised by the petitioner and dismissed the application.

7. Against the said order of dismissal dated 11.04.2012 made in E.A.No.277 of 2007 in E.P.No.78 of 2005, the present Civil Revision Petition is filed by the petitioner.

8. Heard the learned counsel for the respondents and perused the materials available on record.

9. When the Civil Revision Petition was taken up for hearing on 12.09.2017, there was no representation on behalf of the petitioner. Today also, there is no representation on behalf of the petitioner.

10. The learned counsel for the respondents submitted that the second appeal in S.A.No.97 of 2001 filed by the petitioner was dismissed even before filing of the Civil Revision Petition on 01.10.2009 and nothing survives in the Civil Revision Petition.

11. In the circumstances, the Civil Revision Petition is disposed of on merits.

12. The respondents filed suit for redemption of mortgage, after contest, preliminary decree and final decree were passed. As per the said decree, the respondents deposited the amount due in the mortgage and filed E.P.No.78 of 2005 for recovery of possession.

13. The contention of the petitioner that no such property is in existence, description of the property is vague, respondents are not

owners of the property and they are trying to grab the property of the petitioner in collusion with the Court amina and the property is unidentifiable, is without merits. The petitioner has lent money to the respondents on the security of immovable property on creation of the mortgage in his favour by the respondents. In these circumstances, it is not open to the petitioner to contend that there is no such property as claimed by the respondents and respondent has no title over the property.

14. From the materials on record, it is seen that the Court amina has identified the property with the help of surveyor and part of the property had been delivered to the respondents and petitioner objected to the delivery of the remaining portion of the property. The petitioner has not produced any document before the Executing Court, when he examined himself as P.W.1 or before the Court amina, when possession was tried to be taken by the petitioner to show that property sought to be taken delivery is not the suit property. The learned Judge also took note of the fact that the petitioner has denied that the respondents handed over the possession to him and in view of such stand taken by the petitioner,

the petitioner cannot have any serious objection for possession being delivered to the respondents.

15. The learned Judge, considering all the materials available on record, evidence of P.W.1 and P.W.2/Court amina in proper perspective dismissed the application by giving cogent and valid reason. The learned Judge has exercised his power conferred on him properly and there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 11.04.2012.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2017

Index : Yes/No
dm/kj

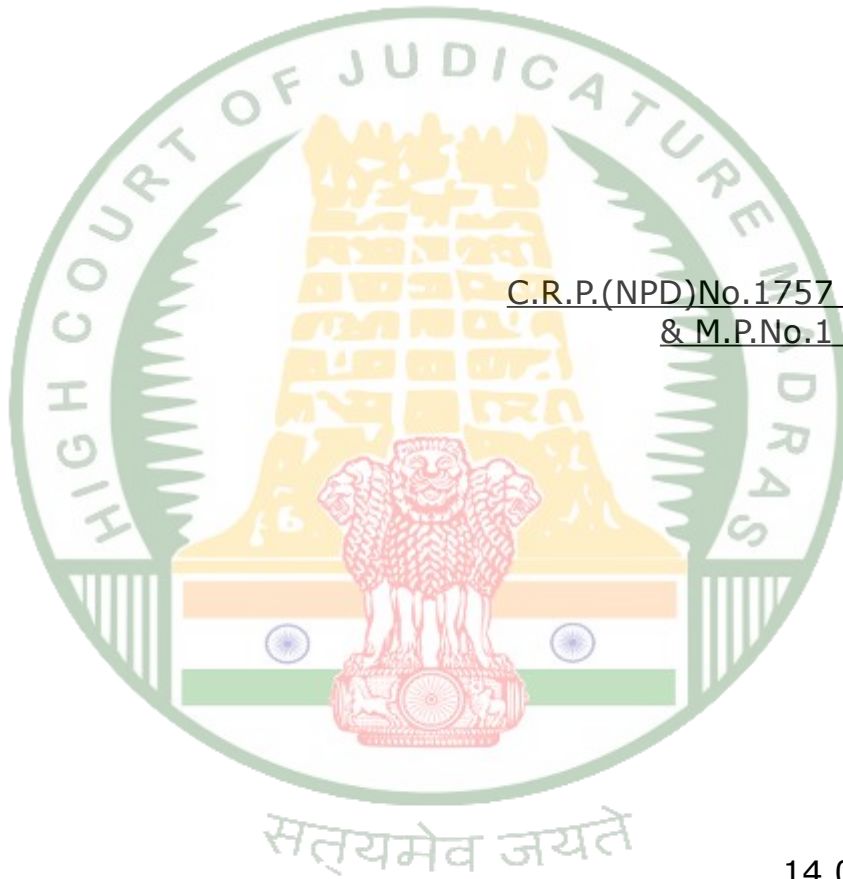
To

The III Additional District Munsif,
Puducherry.

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V.M.VELUMANI, J.

dm/kj



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