

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.2739 of 2008

J.B.Gopal

.. Petitioner

Vs

1.Chandrammal
2.Sivanandan
3.Prakash
4.Soundararajan
5.Gajendran

.. Respondents

(legal heir of deceased 1st respondent
Punniyakodi mudaliar as per order
dated 12.09.2001 in I.A.No.141 of 2005)

Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 11.10.2006 made in C.M.A.No.13 of 2001 on the file of the District-cum-Fast Track Court No.V, Tiruvallur, confirming the order and decretal order dated 27.01.1993 passed in E.A.No.43 of 1992 in O.S.No.45 of 1973 on the file of the District Munsif Court, Tiruttani.

For Petitioner : Mr.J.R.K.Bhavanantham
For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 11.10.2006 made in C.M.A.No.13 of 2001 on the file of the District-cum-Fast Track Court No.V, Tiruvallur, confirming the order and decretal order dated 27.01.1993 passed in E.A.No.43 of 1992 in O.S.No.45 of 1973 on the file of the District Munsif Court, Tiruttani.

2. The petitioner is the judgment debtor and respondents are the decree holders. The respondents herein are the legal heirs of the deceased Punniyakodi Mudaliar, who is the first respondent in C.M.A.No.13 of 2001. The deceased Punniyakodi Mudaliar filed E.P.No.153 of 1988 for sale of the property belonging to the petitioner to execute the decretal amount. The sale was conducted and property was sold. The petitioner filed E.A.No.43 of 1992 under Order 21 Rule 90 of C.P.C. to set aside the sale conducted on 04.12.1991 on the ground that he did not borrow any money from the deceased Punniyakodi Mudaliar. He had borrowed money only from the father of Punniyakodi Mudaliar and subsequently, he discharged the said amount by pledging 6 sovereigns of gold jewels. The property sold was not belonging to the petitioner, but belongs to his son Gopi. His son filed claim petition and the same is pending. Without considering the said

claim petition, sale was effected and hence, he prayed for setting aside the sale conducted on 04.12.1991.

3. The deceased Punniyakodi Mudaliar/deGREE holder filed counter and denied all the averments made by the petitioner. He contended that claim petition filed by the petitioner's son was dismissed and second claim petition filed by his son was also returned as 'not maintainable'.

4. The Executing Court considering the decree dated 24.04.1974, averments made in the affidavit filed in support of the E.A. and counter filed by the deceased Punniyakodi Mudaliar, dismissed E.A. holding that there is no irregularity in conducting sale.

5. Against the said order of dismissal dated 27.01.1993 made in E.A.No.43 of 1992, the petitioner filed C.M.A.No.13 of 2001 on the file of the District-cum-Fast Track Court No.V, Tiruvallur.

6. The learned Appellate Authority considering all the materials on record and order of the Executing Court in E.A., dismissed the appeal holding that the petitioner has not produced any document to

show that he discharged the decretal amount and the property belongs to his son and further held that there is no irregularity in conducting sale.

7. Against the said order dated 11.10.2006 made in C.M.A.No.13 of 2001, the present Civil Revision Petition is filed by the petitioner/judgment debtor.

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

9. The contention of the learned counsel for the petitioner is that he discharged the loan taken by him from the father of Punniyakodi Mudaliar and no amount is due and payable by him. The sale was not conducted properly and the Executing Court committed irregularity in not incorporating the value given by the petitioner and that the property was sold in one lot. Further, the contention of the petitioner is that the property belongs to his son Gopi. In support of his contentions, he relied on the following two judgments:

(i) AIR 1990 Supreme Court 119(1) (Ambati Narasayya v. M.Subba Rao and another);

(ii) 1997-1-L.W. 765 (Lal Chand v. VIIIth Additional District Judge and others);

10. The above said contentions raised by the learned counsel for the petitioner are without any merits. The petitioner has not produced any document to substantiate all the above claims. It is pertinent to note that claim petition filed by the petitioner's son was dismissed and second claim petition filed by his son was also returned as not maintainable. The Courts below have appreciated all the above facts in proper perspective and dismissed E.A.No.43 of 1992 and appeal filed by the petitioner. There is no irregularity or illegality in the order passed by the Courts below.

11. In the result, the Civil Revision Petition is dismissed. No costs.

सत्यमेव जयते

03.10.2017

Index : Yes/No
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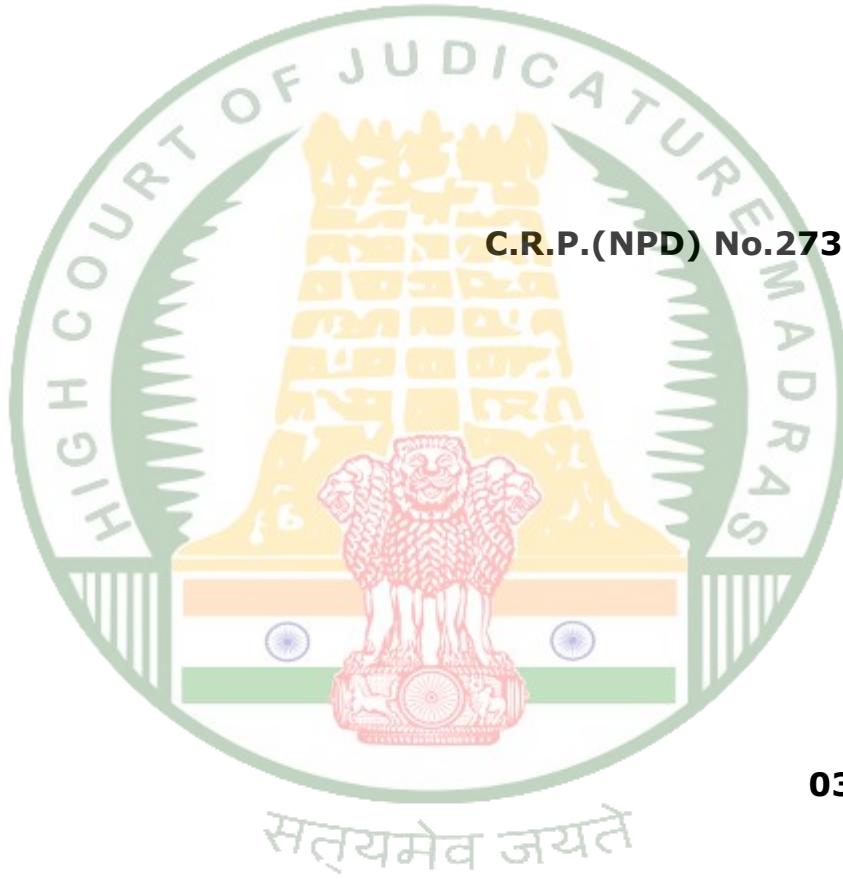
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- 1.The District Munsif Court, Tiruttani.
- 2.The District-cum-Fast Track Court No.V, Tiruvallur.

V.M.VELUMANI, J.

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