

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 3260 of 2016
and
CMP No.16508 of 2016

Dhanabal

.. Petitioner

Vs

E. Jayaraman

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 1.6.2015 made in E.P. No. 111 of 2012 in O.S. No.2125 of 1996 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Ms. Zeenath Begum

For Respondent : Mr. T.L. Thirumalaisamy

ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 1.6.2015 made in E.P. No. 111 of 2012 in O.S. No.2125 of 1996 on the file of the Principal District Munsif Court, Salem.

2. The learned counsel for the petitioner submitted that the respondent herein filed REP No.111 of 2012, for execution of the decree dated 04.11.2003, passed in O.S. No.2125 of 1996. According to the petitioner, the said suit was decreed on 04.11.2003 and the present execution petition has been filed during the year 2012. Therefore, the said execution petition is barred by limitation. Further, learned counsel for the petitioner would submit that there is some discrepancy in the suit property filed in the execution petition. On the aforesaid grounds, the order passed by the court below is liable to be set aside.

3. Per contra, the learned counsel for the respondent would submit that the revision petitioner has not raised the issue that the aforesaid execution petition is barred by limitation, before the trial court. However, the learned counsel clarified that the aforesaid judgement and decree was passed on 04.11.2003 and subsequently, an appeal was filed in A.S. No. 134 of 2004 and the same was dismissed on 14.10.2005 for default. Thereafter, an Interlocutory Application was filed to restore the appeal. The said application was dismissed on 07.07.2006. The present execution petition has been filed on

31.08.2009. Therefore, the said Execution Petition is within the time limit. In so far as the description of the property is concerned, it is for the petitioner to make his objection before the court below.

4. It is an admitted fact that the petitioner has not raised the plea that the execution proceedings is barred by limitation, before the trial court and only in the revision petition, the said point has been raised. However, it is the contention of the learned counsel for the petitioner that the legal issue can be raised at any stage, even before this Court. The said fact is disputed by the learned counsel for the respondent.

5. Taking into consideration the facts of the case and the aforesaid submission made by the learned counsel for the parties, raising a plea cannot be entertained and hence there is no warrant to interfere with the order passed by the trial court. However, as far as the relief prayed, with regard to the description of property, the petitioner can file appropriate application before the trial court, to raise his objections.

6. As there is no error or illegality in the order passed by the court below, this Court is not inclined to interfere with the order passed by the Principal District Munsif Court, Salem, on 1.6.2015 in E.P. No. 111 of 2012 in O.S. No.2125 of 1996.

7. Therefore, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

15.11.2017

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy today ie. 22.01.2017]

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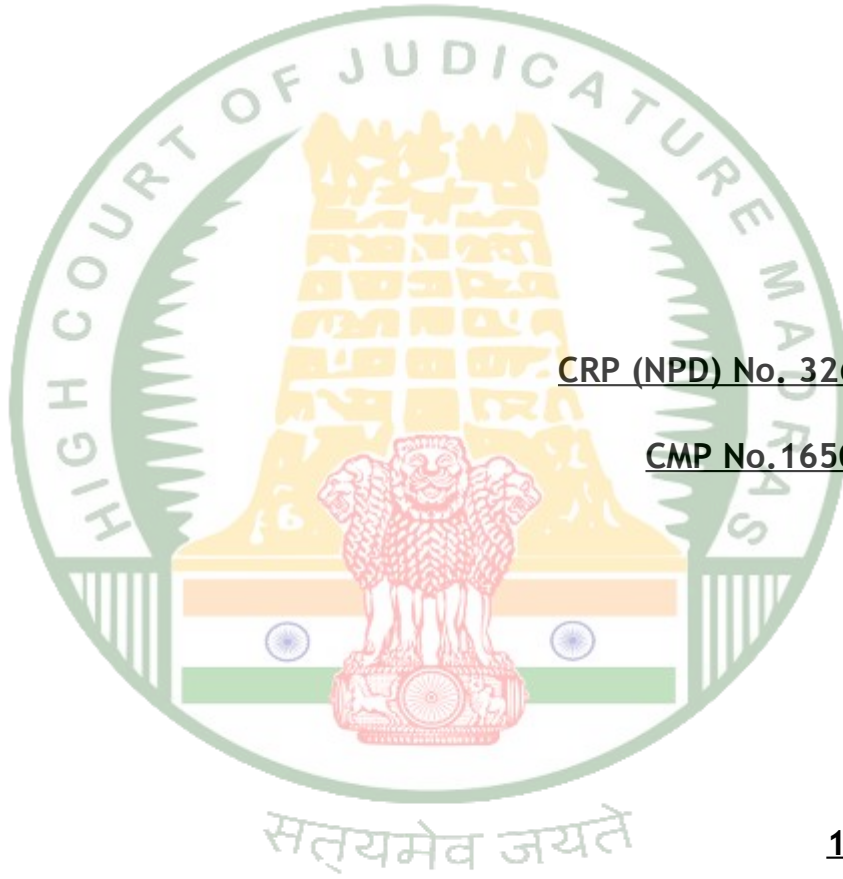
To

The Principal District Munsif Court
Salem.

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D. KRISHNAKUMAR J.,

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