

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.815 of 2010
& M.P.No.1 of 2010

V.Senthil Kumar .. Petitioner

Vs.

1. K.Pormannan
2. Molavi Ammal
3. Premakumari
4. Tamil Selvi
5. Chitra

6. Appu (alias) Rajkumar .. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the Order dated 17.08.2009 in CMA.No.4/2009 on the file of District Judge, Thiruvannamalai , reversing the fair and decreetal order dated 22.10.2008 in I.A.No.88/2000 in I.A.No.174/1999 in O.S.No.146/1999 on the file of Additional Subordinate Judge, Thiruvannamalai.

For Petitioner : Mr.G.Rajan

For R1 : M/s.R.Sripriya
for Mr.V.Raghavachari

ORDER

This Civil Revision Petition is filed against the Order dated 17.08.2009 made in CMA.No.4/2009 on the file of District Judge, Thiruvannamalai, reversing the fair and decretal order dated 22.10.2008 made in I.A.No.88/2000 in I.A.No.174/1999 in O.S.No.146/1999 on the file of Additional Subordinate Judge, Thiruvannamalai.

2. The petitioner is 4th defendant, first respondent is the plaintiff, respondents 2 to 4 are the defendants 1 to 3 and respondents 5 and 6 are the defendants 5 and 6 in O.S.No.146 of 1999 on the file of the Additional Subordinate Judge, Thiruvannamalai. The petitioner is the son of late Venkatakrishna Reddiar, who borrowed money from first respondent/plaintiff. The first respondent filed the said suit for recovery of money payable by the deceased Venkatakrishna Reddiar, against petitioner and other legal heirs of the Venkatakrishna Reddiar. He also filed I.A.No.174 of 1999 for attachment before judgement and attachment before judgement was ordered. The petitioner filed I.A.No.88 of 2000 under Order 38 Rule 8 C.P.C for raising attachment. According to the

petitioner, he has purchased the first item of the property out of his self-earning and from the amounts borrowed from his mother/3rd defendant in the suit. He sought raising attachment in respect of the 1/5 share in the other property. According to the petitioner, his father, deceased Venkatakrishna Reddiar, was leading a way-ward life. He sold first item of the property to one Kuppusamy for a sum of Rs.92,500/- by sale deed dated 06.04.1999 with agreement to re-purchase the sale within 4 years. He did not re-purchase the said property. Only the petitioner purchased the property from the said Kuppusamy.

3. The first respondent/plaintiff filed counter affidavit and denied all the averments made in the affidavit filed in support of I.A.No.88 of 2000. According to the first respondent, the property was purchased only by the deceased Venkatakrishna Reddiar in the name of the petitioner to defraud the interest of the creditors and prayed for dismissal of the application for raising attachment.

4. Before the learned Judge, the petitioner examined himself as Pw1 and other witnesses as Pws.2 and 3 and marked 5 documents as Exs.A1 to A5. The plaintiff examined himself as RW1 and two other witnesses as Rws.2 and 3 and did not mark any

documents.

5. The learned Judge, considering the averments in the affidavit, counter affidavit, materials on record and documents relied on by the parties, raised the attachment in respect of the first item of the property and confirmed the attachment in respect of other items of the properties. The 1st respondent filed C.M.A.No.4 of 2009 on the file of the District Judge, Tiruvannamalai against the order raising attachment in respect of first item of property. The learned Appellate Judge, considering the evidence let in by the petitioner and first respondent, materials available on record and order of the learned Trial Judge, allowed the C.M.A, setting aside the order raising attachment.

6. Against the said judgement dated 17.08.2009, made in C.M.A.No.4/2009, the petitioner has filed the present Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner as well as the first respondent and perused the materials available on record.

8. From the evidence of the petitioner as PW1, it is seen that he has purchased the first item of the property on 06.04.1999. At that time, he was aged 20 years. According to the petitioner, he was working in a Bureau Company and was also doing Milk vending business in the year 1990 and was having Rs.50,000/- with him in the year 1993, which he had entrusted with his paternal uncle. Utilizing the said amounts and amounts borrowed from his mother, he purchased the first item of the property. The learned Appellate Judge, took note of the fact that during 1987, the petitioner was aged only 5 to 6 years and in the year 1992, he was 10 years. At the tender age, the petitioner could not have worked in the Bureau Company; would not have done Milk vending business and hence would not had Rs.50,000/- with him. The PW2, the paternal uncle of the petitioner did not depose that petitioner entrusted Rs.50,000/- to him. The PW2, Annamalai deposed that Venkatakrishna Reddiar, his wife and their children including the petitioner were living together as a joint family. The RW2, examined on behalf of the first respondent deposed that Venkatakrishna Reddiar was Chairman of the Panchayat Union till his death. From the deposition of the PW2, that petitioner's family is a joint family and age of the petitioner mentioned in the Ex.P2, sale deed, the learned Judge disbelieved

the contention of the petitioner that he purchased the property out of his self-earning and amounts borrowed from his mother and allowed the C.M.A. Considering all the above facts and order of the learned Appellate Judge, I find there is no illegality or irregularity in the order of the learned Appellate Judge, warranting interference by this Court.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. As the suit is of the year 1999, the learned Additional Subordinate Judge is directed to dispose the suit as expeditiously as possible in any event, not later than 3 months from the date of receipt of a copy of this order.

30.10.2017

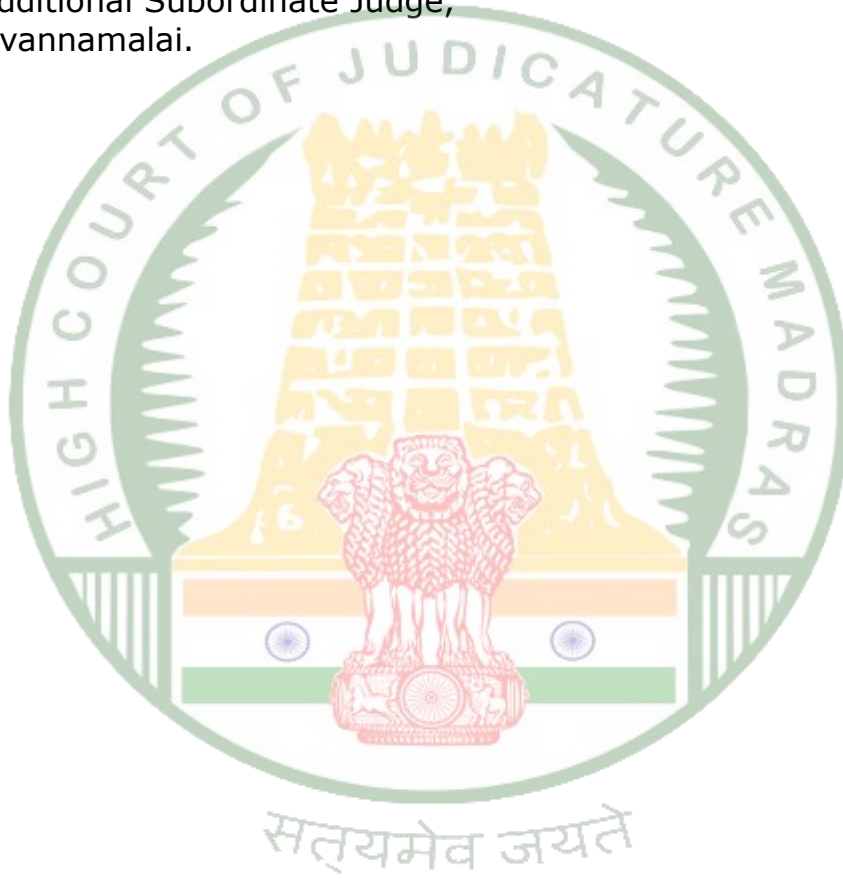
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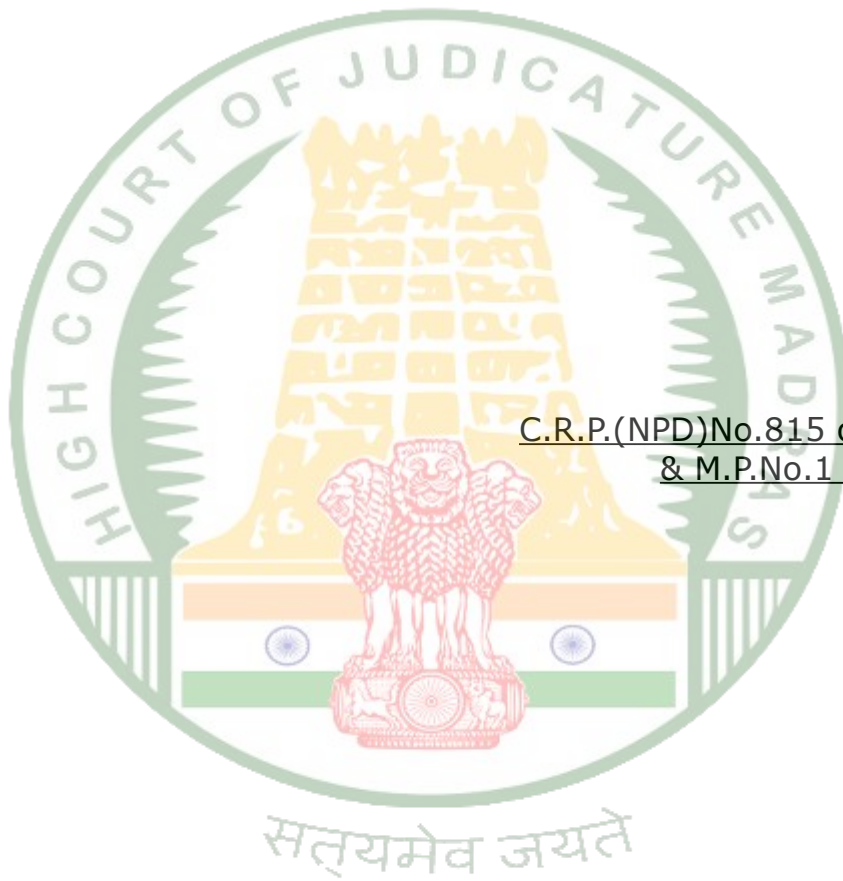
1. The District Judge,
Thiruvannamalai
2. The Additional Subordinate Judge,
Thiruvannamalai.



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V.M.VELUMANI,J.

VV



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