

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4905 & 4906 of 2012
&
M.P.No.1 of 2012

1.Mrs.Kalavathy
2.Mrs.K.Menaka
3.Mrs.Malar

.. Petitioners in both Crps

Vs.

1.A.Adaikkalam
2.K.Karunakaran @ Karunanidhi

... Respondents in both Crps

PRAYER IN BOTH THE C.R.Ps:

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against order dated 12-12-2012 made in E.A.No.498 of 2011 in E.P.No.259 of 2010 in O.S.No.272 of 2006 and order dated 12.12.2012 made in E.P.No.259 of 2010 in O.S.No.272 of 2006 respectively on the file of the Sub Court, Kancheepuram.

For Petitioners : C.Prabakaran

For R1 : M/s.K.Meenakshi Sundaram

For R2 : No appearance.

COMMON ORDER

These Civil Revision Petitions are filed against the order dated 12-12-2012 made in E.A.No.498 of 2011 in E.P.No.259 of 2010 in O.S.No.272 of 2006 and order dated 12.12.2012 made in E.P.No.259 of 2010 in O.S.No.272 of 2006 respectively on the file of the Sub Court, Kancheepuram.

2.The issue involved in both the Civil Revision petitions are one and the same and therefore disposed of by this common order.

3. The petitioners are third parties. The first respondent is the plaintiff. Second respondent is the defendant. The first respondent filed the suit in O.S.No.272 of 2006, against the second respondent for specific performance of agreement of sale deed dated 27.04.2005. The said suit was decreed. The first respondent filed E.P.No.259 of 2010 against the second respondent for execution of the sale deed. The petitioners filed two applications in E.A.No.498 of 2011 and E.A.No.371 of 2012 in E.P.No.259 of 2010, for dismissal of E.P. and stay of further proceedings in E.P.

3. According to the petitioners, the property in question belonged to their father Kaliappan and after his death, the

petitioner, the second respondent, their mother and two other brothers have 1/7th share each in the suit property. Petitioners filed a suit in O.S.No.303 of 2011 on the file of the Sub Court, Kancheepuram for partition against their mother, two brothers and first respondent and second respondent. The said suit is pending.

4. In view of the above facts petitioners prayed for dismissal of the E.P. and stay of further proceedings in the E.P. The first respondent filed counter affidavit and denied all the averments and submitted that originally Joint patta was in the name of the second respondent, his mother and two brothers. The mother and two brothers executed release deed, releasing their shares in favour of the second respondent dated 21.01.2002 in document No.149 of 2002. In view of the same, the second respondent has become the absolute owner and patta issued in his name. In collusion with second respondent, the petitioners have filed present petitions to prevent the first respondent from enjoying the fruits of decree.

5. The learned Judge has ordered notice and enquiry is pending in the said application. While so, by the order dated 12.12.2012, the learned Judge proceeded with the execution

petition and directed the second respondent to execute the sale deed.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. Against the Order dated 12-12-2012 made in E.A.No.498 of 2011 in E.P.No.259 of 2010 in O.S.No.272 of 2006 and order dated 12.12.2012 made in E.P.No.259 of 2010 in O.S.No.272 of 2006, the present Civil Revision petitions are filed by the petitioners.

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

9. As far as C.R.P.No.4905 of 2012 is concerned, it is seen from the materials on record, that petitioners have filed two applications in E.A.No.498 of 2011 in E.P.No.259 of 2010 in O.S.No.272 of 2006 dated 20.11.2011 for dismissal and E.A.No.371 of 2012 in E.P.No.259 of 2010 dated 11.10.2012 for stay of further proceedings in E.P. In the said application, petitioners claim 1/7th share each in the suit property, claiming to have inherited after the death of their father.

10. The learned Judge ordered notice in the said E.A and the first respondent also filed counter affidavit in both the applications.

Both the applications were posted for enquiry. Without considering the said applications on merits and passing orders in accordance with law, the learned judge proceeded with the E.P. and directed to execute the sale deed and thereby committed irregularity and failed to exercise his powers conferred on him properly.

11. In view of the above facts, the C.R.P.No.4905 of 2012 is allowed and the order in E.P.No.259 of 2010 dated 12.12.2012 is set aside and the learned judge is directed to dispose the E.A.498 of 2011 within one month from the date of receipt of a copy of this order and proceed with E.P. and pass orders one month thereafter.

12. In view of the order passed in C.R.P.(NPD).No.4905 of 2012, no order is required in the C.R.P.(NPD)No.4906 of 2012. Hence, C.R.P.(NPD)No.4906 of 2012 is dismissed. No costs. Consequently connected miscellaneous petition is closed.

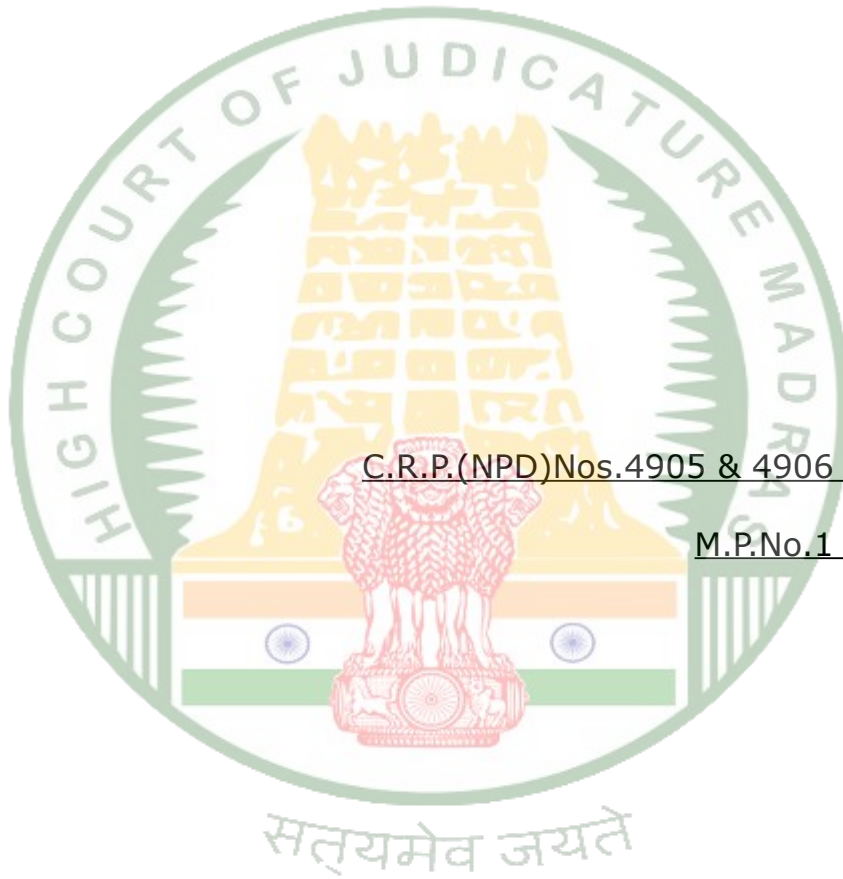
gsa/mfa
To
The Sub ordinate Judge,
Kancheepuram.

28.07.2017

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V.M.VELUMANI,J.

mfa



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