

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.2433 of 2011

and

M.P.Nos.1 to 3 of 2011

1. Palani Gounder
2. Shanmugam
3. Rajamani
4. Palanisamy
5. Mani
6. Marimuthu
7. Sengottaiyan

... Petitioners

Vs

Ayyandurai

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the Fair and Decretal Order dated 21.06.2011 passed in R.E.A.No.21 of 2010 in R.E.P.No.45 of 2007 in O.S.No.308 of 2005 on the file of the District Munsif of Sankari seeking to set aside the same.

For Petitioners
For Respondent

: Mr.R.Nagasundaram
: Mr.P.Jagadeesan

ORDER

The petitioners herein are arrayed as judgment debtors 1 to 6 in R.E.P.No.45 of 2007 in O.S.No.308 of 2005 on the file of the District Munsif Court, Sankari.

2. The brief facts that are necessary for disposing the petition are that: The petitioners have suffered an exparte decree declaring a right of way and allied mandatory injunction in favour of the respondent. The suit was decreed exparte on 08.09.2006. For executing the same, the plaintiff had filed an Execution Petition wherein a Commissioner was appointed. When the Commissioner visited the property he was obstructed by the revision petitioners herein. They were stated to have literally blocked the entry of the Commissioner into the suit property. This was reported by the Commissioner to the Execution Court whereupon the Court issued a warrant of arrest on the revision petitioners. The 4th petitioner herein, who is the 4th Judgment Debtor before the Execution Court has been arrested. He was since released and the petitioners have now approached this Court challenging the said order of arrest.

3. Heard Mr.R.Nagasundaram, learned counsel for the revision petitioners and Mr.P.Jagadeesan, learned counsel for the respondent.

4. Couple of facts are not in dispute: That the petitioners have suffered an exparte decree, that the Commissioner was appointed and he took efforts to visit the property. Whether he has been obstructed by the judgment debtor is a question of fact. However, at this point of time, the relevant period when obstruction was said to have taken place was about 7 years. It is also not now certain whether warrant of arrest still subsists. This Court therefore directs the petitioners to move the Execution Court to recall any warrant of arrest, if it is not already withdrawn, and remain to be executed.

5. With the above direction, this Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed. This order in no way will be a bar to the plaintiff to execute the decree in the manner known to law unless it is stayed otherwise by a Court of Competent jurisdiction.

24.04.2018

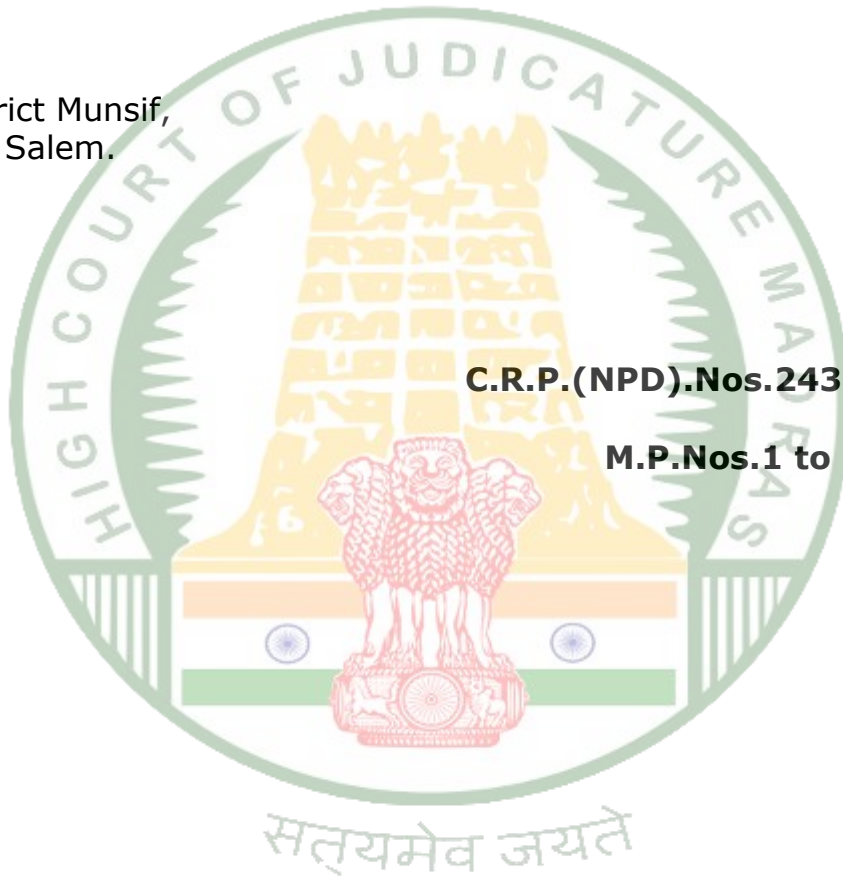
Index:Yes/No
ssn

N.SESHASAYEE, J.,

ssn

To

The District Munsif,
Sankari, Salem.



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