

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.09.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) No.1163 of 2003

Thangarasu Padayachi

... Petitioner

versus

1.Minor Raman
2.Minor Nadhipriya
3.Jothi Chettiar

(R1 and R2 declared as major and guardian
& mother Kayalvizhi discharged from
guardianship vide Court order dated
24.08.2017 made in C.M.P.Nos.532 &
533 of 2014 in C.R.P.No.1163 of 2003)

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the judgment and decree dated 28.03.2003 made in C.M.A.No.36 of 2002 on the file of the Additional District Court-cum-Chief Judicial Magistrate's Court, Cuddalore District, Cuddalore, confirming the fair and decretal order dated 07.11.2001 made in E.A.No.18 of 1996 in E.P.No.27 of 1996 in O.S.No.513 of 1992 on the file of the Sub Court, Panruti.

For Petitioner : Mr.S.Kingston Jerold

For R1 & R2 : Mr.R.Gururaj
For R3 : No appearance

ORDER

The above Civil Revision Petition is filed challenging the concurrent order that is being passed in a claim petition filed by the respondents 1 and 2 herein under the provisions of Order XXI Rule 58 of C.P.C.

2.The facts in brief are as follows:

The revision petitioner had filed a suit O.S.No.513 of 1992 on the file of the Sub Court, Cuddalore, for recovery of amounts said to be due under two promissory notes dated 21.12.1989 for a sum of Rs.17,000/- and another dated 11.07.1990 for a sum of Rs.15,000/- from the third respondent herein. Curiously, on the

very first day of the hearing, the defendant namely, third respondent submitted to the decree. The Sub Court, Cuddalore, had passed judgment and decree on 20.01.1993 on the basis of this submission by the third respondent herein. Thereafter, the revision petitioner herein had filed execution proceedings in E.P.No.18 of 1996 on the file of the Sub Court, Panruti, for attachment and sale of the properties described thereunder. On 07.11.2001, the order of attachment was also granted. Thereafter, the respondents 1 and 2 herein filed an application in E.A.No.27 of 1996 to raise the order of attachment, since they have 2/3rd right to the properties in question in an earlier proceedings for partition, which had come up to this Court and had been decreed in favour of the respondents 1 and 2, who are the children of the third respondent. The Executing Court was pleased to allow this application, which was challenged by way of C.M.A. by the revision petitioner herein in C.M.A.No.36 of 2002 on the file of the Additional District Court-cum-Chief Judicial Magistrate Court, Cuddalore. The said appeal was dismissed, against which, the present Civil Revision Petition has been filed by the revision petitioner herein.

3. Heard Mr.S.Kingston Jerold, learned counsel appearing for the revision petitioner and Mr.R.Gururaj, learned counsel appearing for the respondents 1 and 2.

4. The learned counsel for the petitioner would submit that the loan had been borrowed by the third respondent only as a kartha to meet the debts of the family, which included the maintenance of the children and therefore, the children, who are respondents 1 and 2 herein are bound by the borrowal. He would also argue that in pursuance of the decree, the attachment had been effected and therefore, since there is a decree in favour of the revision petitioner, the Executing Court cannot go beyond the decree.

5. Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that the following dates and events would have a bearing on the claim of the revision petitioner and would highlight the collusion between the revision petitioner and the third respondent herein:

The third respondent had deserted the family and was living with another woman called Saroja and through her, he had two children.

"12.06.1990

Notice by the respondents 1 and 2 demanding partition of their 2/3rd share.

14.06.1990

Reply denying the claim and suit for partition in O.S.No.625 of 1990 is filed. The said Saroja and her children are also impleaded as parties to the said proceedings.

15.12.1992

The present suit O.S.No.513 of 1992, from and out of which

instant proceedings have emanated, is filed by the revision petitioner, against the third respondent herein.

20.01.1993

Third respondent herein submits to a decree and therefore, suit O.S.No.513 of 1992 is decreed.

24.12.1996

Preliminary decree is passed in the partition suit O.S.No.625 of 1990.

07.11.2001

Attachment ordered in E.P.No.18 of 1996 in O.S.No.513 of 1992.

29.12.2003

First appeal filed by the second wife and children of the third respondent in A.S.No.4 of 2001 is dismissed.

03.09.2004

Second Appeal filed by them in S.A.No.1805 of 2004 is also dismissed. "

6.It is seen that pending the partition suit, the instant execution proceedings had been instituted and the respondents 1 and 2 had filed an application raising a claim on 22.08.1994 stating that the borrowal was not for family needs, that the third respondent had been leading the wayward life even prior to the alleged execution of the promissory notes. It is also clear that the suit on promissory notes came to be filed as counter blast to the suit filed by the respondents 1 and 2 claiming partition.

7.The suit appears to be filed in collusion between the revision petitioner and the third respondent for the following reasons:

(a) The third respondent had submitted to a decree on the very first hearing;

(b) Though his second wife and children had been impleaded as parties to the partition suit O.S.No.625 of 1990, the third respondent has apparently instigated his wife and children to file a suit against him in O.S.No.384 of 1991 in which suit also the third respondent had submitted to a decree. However, the decree in O.S.No.384 of 1991 has not been brought to the knowledge of the Court, while dealing with the impugned petition.

8.The Courts below have rightly come to the conclusion that the borrowal is not for the family benefits and therefore, the respondents 1 and 2 are not liable for the debts incurred by the third respondent. The right of the respondents 1 and 2 i.e., 2/3rd share in the suit property has been confirmed even in S.A.No.1805 of 2004. Therefore, the attachment insofar as relates to 2/3rd share belonging to the respondents 1 and 2 has to definitely be raised. The total extent of the property is 8

Acres and 36 Cents. The revision petitioner can very well move against the 1/3rd share of the third respondent to realise his dues. I find no infirmity in the order passed by the Courts below. The Civil Revision Petition is, therefore, dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
(Chief Judicial Magistrate)
Cuddalore District.

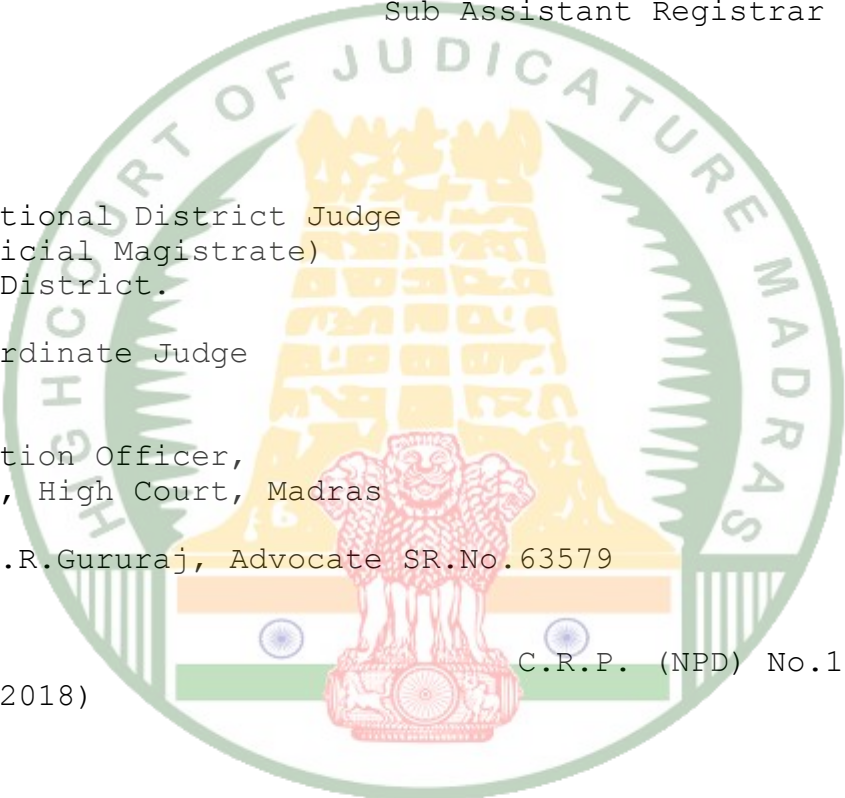
2.The Subordinate Judge
Panruti.

3. The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.R.Gururaj, Advocate SR.No.63579

GMV (22/10/2018)

C.R.P. (NPD) No.1163 of 2003

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the gopuram. Below the gopuram, there is a red lion capital on a base. The motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script at the bottom of the seal.

सत्यमेव जयते

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