

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2412 of 2010
& M.P.No.1 of 2010

1.O.R.Madhavaraj (deceased)
2.S.Mohanamani
3.S.Geetha .. Petitioners
(Petitioners 2 and 3 brought on record
as L.Rs of the deceased first petitioner
vide Court order dated 02.01.2018
made in M.P.No.1/2014 in C.R.P.No.2412/2010)

Vs.

R.Manickaraj .. Respondent
PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the docket order dated 17.06.2010,
made in R.E.A.No.154 of 2010 in R.E.P.No.10 of 2008 on the file of
the I Additional Subordinate Court, Salem.

For Petitioners : Mr.K.Selvaraj

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the docket order
dated 17.06.2010, made in R.E.A.No.154 of 2010 in R.E.P.No.10 of
2008 on the file of the I Additional Subordinate Court, Salem.

2.The deceased first petitioner is the plaintiff, petitioners 2 and 3 are the legal heirs of the deceased plaintiff and respondent is the defendant in O.S.No.181 of 2002 on the file of the Principal Subordinate Court, Salem. The deceased first petitioner filed the said suit for recovery of money. The said suit was decreed. The deceased first petitioner filed R.E.P.No.10 of 2008 for attachment and sale of the properties belonging to the respondent mentioned in the E.P. The property was sold by the Court auction on 24.03.2010. The respondent filed R.E.A.No.154 of 2010 to set aside the sale on 14.06.2010. According to the respondent, the said application ought to have been filed within 60 days from the date of the sale i.e., on or before 27.05.2010. The respondent filed application on 14.06.2010 and prayed for exclusion of vacation period of 30 days. The Executing Court numbered the application and ordered notice to the deceased first petitioner and adjourned the above R.E.A to 18.06.2010 for notice of hearing and counter by deceased first petitioner. According to the deceased first petitioner, the application to set aside the sale must be filed within 60 days as per Article 127 of Limitation Act, 1963. The respondent filed application beyond the period of 60 days. The Section 5 of the Limitation Act is not

applicable to the execution proceedings. The learned Judge erred in numbering the application and ordering notice to the deceased first petitioner. Auction purchaser has deposited entire amount and the deceased first petitioner has withdrawn the decree amount. The sale certificate was issued in favour of the auction purchaser. At this stage, the application is not maintainable without impleading the auction purchaser.

3. Against the said docket order dated 17.06.2010, made in R.E.A.No.154 of 2010 in R.E.P.No.10 of 2008, numbering R.E.A.No.154 of 2010 and ordering notice, the deceased first petitioner has come out with the present Civil Revision Petition. Pending Civil Revision Petition, the first petitioner died and his legal heirs were impleaded as petitioners 2 and 3.

4. Cause list shows that Mr.C.K.M.Appaji has filed vakalat for the respondent and the same was returned. Though respondent's name is printed in the cause list, there is no representation for him either in person or through counsel. Heard the learned counsel for the petitioners and perused the materials available on record.

5. When a period for filing an application ends during holiday, the application must be filed on the next working day of the Court. If the said application is not filed on the next working day of the Court, the same is beyond the period of limitation. In the present case, the period of limitation ended on 27.05.2010, during summer vacation. The respondent filed present application on 14.06.2010. The learned counsel for the petitioners produced the calendar of the year 2010 and submitted that the Court reopened on 07.06.2010, after summer vacation, while the respondent filed application only on 14.06.2010. In such circumstances, the application is filed beyond the period of limitation and delay has to be reckoned from 28.05.2010 to 13.06.2010. The explanation given by the respondent that 30 days of vacation period has to be excluded in calculating the period of limitation is not correct in the facts of the present case. The period of summer vacation can be excluded only if the application is filed on the reopening day. In the present case, the application was not filed on the reopening date, but it was filed only on 14.06.2010, beyond the period of limitation. In view of the same, the contention of the learned counsel for the petitioners that Executing Court erred in entertaining the application by numbering

and ordering notice to the deceased first petitioner has considerable force. This Court under Article 227 of the Constitution of India has superintending power over all the courts subordinate to it and has power to strike off the proceedings of Subordinate Court erred in entertaining the same. This Court exercising extraordinary discretionary power under Article 227 of the Constitution of India, strikes off R.E.A.No.154 of 2010.

6.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

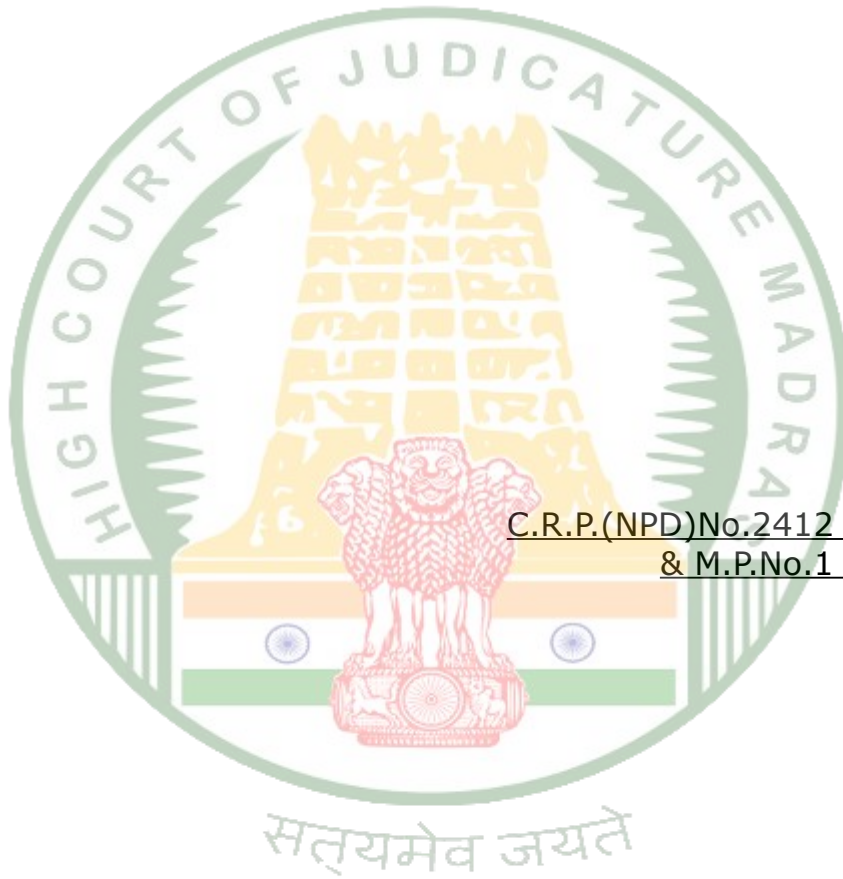
To

The I Additional Subordinate Judge,
Salem.

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V.M.VELUMANI,J.

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C.R.P.(NPD)No.2412 of 2010
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