

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos. 4647 of 2010, 1146 of 2011 and 2028 of 2013
& M.P.Nos.1 of 2010, 1 of 2011, 1 of 2012 and 1 of 2013

S.Chokkalingam .. Petitioner in
CRP.Nos.4647 of 2010 and 1146 of 2011

Vs

M.Kuppuraj .. Respondent in
CRP.Nos.4647 of 2010 and 1146 of 2011

C.R.P.No.2028 of 2013

S.Chokkalingam .. Petitioner

Vs

R.Muthusamy (died)
M.Kuppuraj .. Respondent

C.R.P.No.4647 of 2010:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the proclamation order of sale of immovables dated 05.01.2011 in E.P.No.136 of 2009 in O.S.No.1390 of 2000 on the file of the II Additional Subordinate Court, Coimbatore and further hearing on 10.01.2011.

C.R.P.No.1146 of 2011:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the proclamation notice order of sale of immovables dated 07.02.2011 in E.P.No.127 of 2009 in O.S.No.1395 of 2000 on the file of the II Additional Subordinate Court, Coimbatore, sale on 23.03.2011 and further hearing on 28.03.2011.

C.R.P.No.2028 of 2013:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the proclamation order of sale of immovables dated 17.04.2013 in E.P.No.132 of 2009 in O.S.No.1397 of 2000 on the file of the II Additional Subordinate Court, Coimbatore.

In C.R.P.Nos.4647 of 2010 & 1146 of 2011

For Petitioner : Mr.B.Nedunchezhiyan

For Respondent : Mr.C.Veeraraghavan

In C.R.P.No.2028 of 2013

For Petitioner : Mr.B.Nedunchezhiyan

For Respondent : Mr.M.Sivavarthanan

COMMON ORDER

C.R.P.No.4647 of 2010 is filed against the proclamation order of sale of immovables dated 05.01.2011 in E.P.No.136 of 2009 in O.S.No.1390 of 2000 on the file of the II Additional Subordinate Court, Coimbatore and further hearing on 10.01.2011.

C.R.P.No.1146 of 2011 is filed against the proclamation notice order of sale of immovables dated 07.02.2011 in E.P.No.127 of 2009 in O.S.No.1395 of 2000 on the file of the II Additional Subordinate Court, Coimbatore, sale on 23.03.2011 and further hearing on 28.03.2011.

C.R.P.No.2028 of 2013 is filed against the proclamation order of sale of immovables dated 17.04.2013 in E.P.No.132 of 2009 in O.S.No.1397 of 2000 on the file of the II Additional Subordinate Court, Coimbatore.

2. All the three suits O.S.Nos.1390, 1395 and 1397 of 2000 are filed by one R.Muthusamy against the petitioner for recovery of money. All the three suits were decreed on 13.01.2005, 04.07.2005 and 24.02.2005 respectively. The petitioner did not pay the decretal amounts. The said decree holder Muthusamy filed three Execution Petitions E.P.Nos.136, 127 and 132 of 2009 on the file of the I Additional Subordinate Court, Coimbatore, for attachment and sale of the petitions' property for recovery of money as per the decree. In all the three E.Ps., proclamation was settled. The petitioner has challenged the proclamation order of sale of immovables dated 21.02.2011 in C.R.P.No.1146 of 2011, dated 10.12.2010 in C.R.P.No.4647 of 2010 and dated 17.04.2013 in C.R.P.No.2028 of

2013. The proclamation notice settled in three E.P.Nos.136, 127 and 132 of 2009.

3. According to the petitioner, the property is worth more than Rupees One Crore is sought to be sold for realising the meagre decretal amount of Rs.5,71,245/-, Rs.4,16,693/- and Rs.4,94,672/- in all the three suits respectively and the proclamation of sale was settled on 21.02.2011, 10.12.2010 and 17.04.2013 respectively. The petitioner challenging the said proclamation notice filed the three C.R.P.Nos.4647 of 2010, 1146 of 2011 and 2028 of 2013 respectively.

4. In all the three Civil Revision Petitions, the contention of the learned counsel for the petitioner is that the property sought to be sold is now worth about Rupees Four Crores and share of the petitioner is Rs.70 Lakhs. The revenue from the said property is Rs.40,000/- per day. The learned Judge erred in ordering sale of the entire property for meagre decretal amounts. The learned Judge ought to have settled the proclamation directing the sale of a portion of the property sufficient to realise the amount claimed in all the three Civil Revision Petitions. Further, the learned Judge has not mentioned the revenue generated from the property.

5. Both the learned counsel appearing for the respondent in C.R.P.Nos.4647 of 2010 and 1146 of 2011 and the learned counsel for the respondent in C.R.P.No.2028 of 2013 contended that the petitioner has filed the present three Civil Revision Petitions only to drag on the proceedings and prevent the respondent from enjoying the fruits of the decree. The petitioner has not indicated, which portion of the property is to be sold to realise the decretal amounts. The property is indivisible and only entire property can be sold and it is not possible to sell any portion of the property and prayed for dismissal of the Civil Revision Petitions.

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

7. From the materials available on record, it is seen that the decrees were passed in all the three suits O.S.Nos.1390, 1395 and 1397 of 2000. The decree holder one Muthusamy filed three E.P.Nos.136, 127 and 132 of 2009 for recovery of money by attaching and selling of the property mentioned in the petitions as the petitioner has failed to pay the decretal amounts and Muthusamy is unable to realise the amount. The petitioner has filed the present three Civil

Revision Petitions challenging the settlement of proclamation of sale. This Court by order dated 23.12.2010 made in C.R.P.No.4647 of 2010 and 22.03.2011 made in C.R.P.No.1146 of 2011, granted interim stay on condition that the petitioner deposits a portion of the decretal amounts. In compliance of the said order, the petitioner has already deposited the portion of the decretal amounts. The petitioner is challenging the proclamation of sale on the ground that the Executing Court erred in ordering sale of the entire property of the petitioner worth Rupees Four Crores for realisation of the meagre decretal amounts. According to the petitioner, a portion of the property can be sold to satisfy the decretal amounts in all the three suits. The petitioner has not indicated which portion of his property can be sold conveniently to realise the decretal amounts. The petitioner has also not indicated the property sought to be sold is divisible. There is nothing on record to show that the petitioner has raised this issue before the Executing Court at the time of proclamation of sale.

8. Considering all the materials available on record in entirety and previous order passed by this Court, it is clear that the intention of the petitioner is only to drag on the proceedings and to prevent the decree holder from realising the decretal amounts.

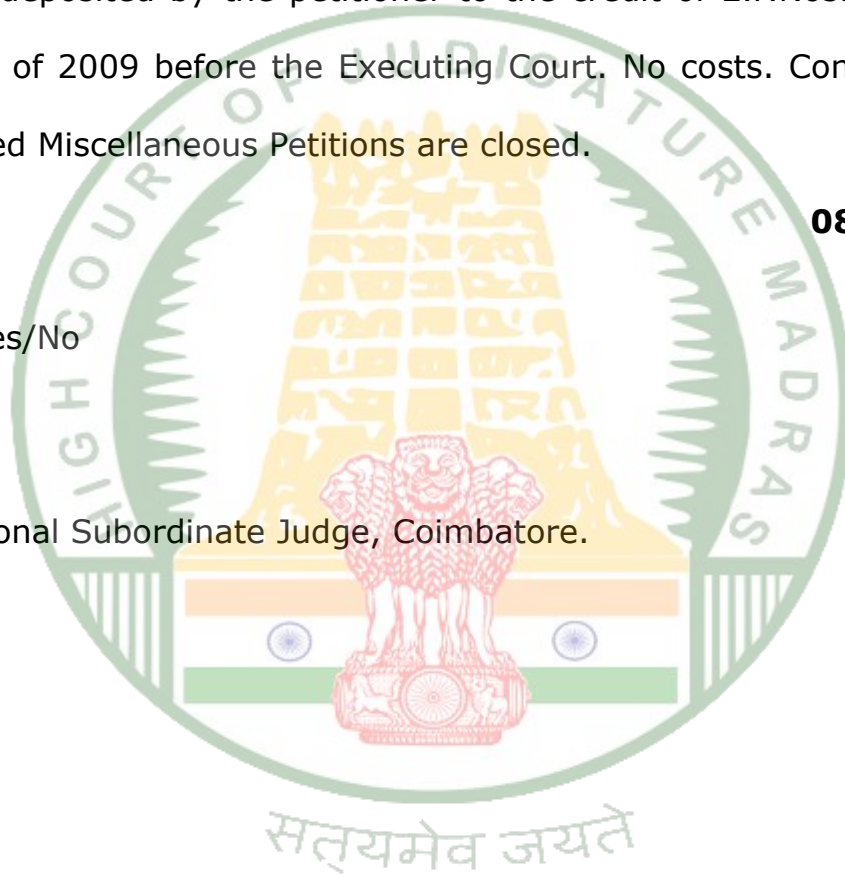
9. In the result, all the three Civil Revision Petitions are dismissed. The learned counsel for the respondent seeks permission of this Court to withdraw the entire amount already deposited by the petitioner. It is open to the respondent to file a petition to withdraw the amount deposited by the petitioner to the credit of E.P.Nos. 136, 127 and 132 of 2009 before the Executing Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.03.2018

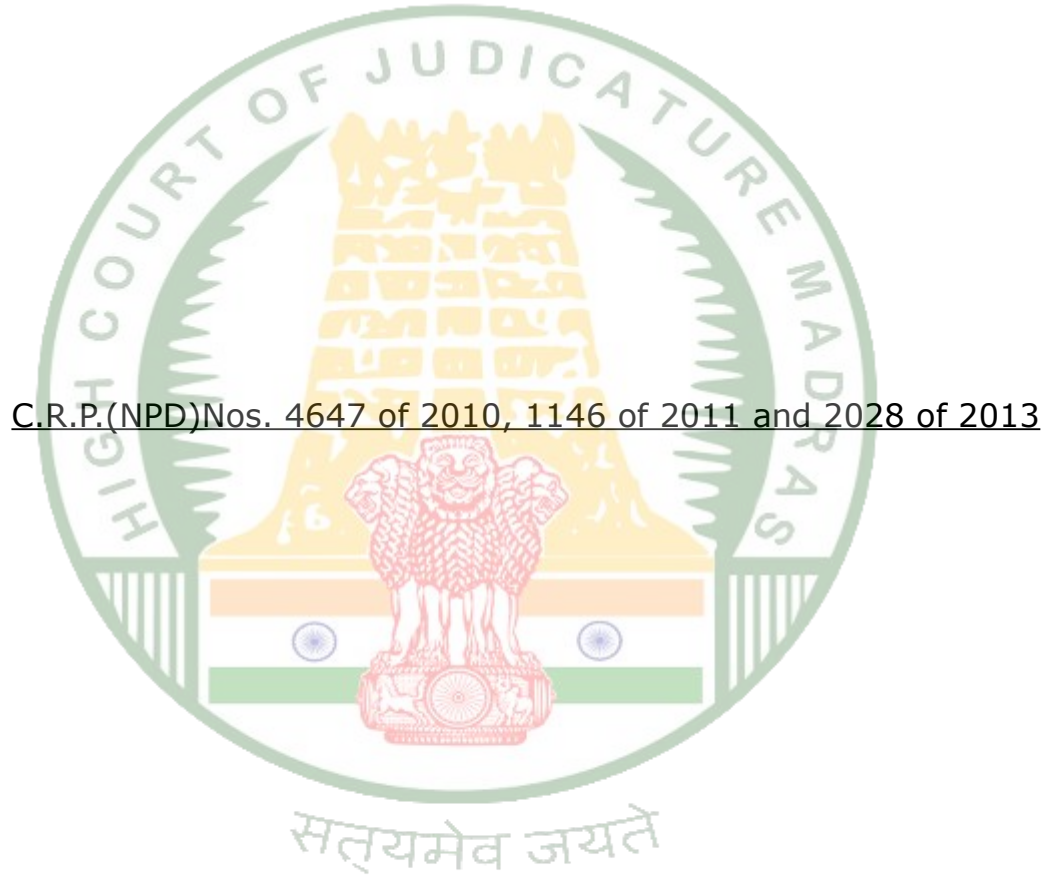
Index:Yes/No

To

II Additional Subordinate Judge, Coimbatore.



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