

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.24166 of 2012

&

M.P.Nos. 1 & 2 of 2012

1.K.Kothavari
2.K.Senthil Raja
3.S.Kalai Selvi

...Petitioners

Vs.

1.The Assistant Commissioner (CT)
Sangagiri,
Salem District.

2.M.Kandasamy,
Impleaded, as per order dated
09.11.2012 made in M.P.No.3/2012 in
W.P.24166/2012

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for records on the files of the respondent, in his proceeding in Na.Ka.4105/1985/A3 dated 02.07.2012 and to quash the same.

For Petitioners : Mrs.R.Hemalatha

For Respondent-1 : Mr.M.Hari Haran
Additional Government Pleader

For Respondent-2 : Mr.A.Ilangovan

O R D E R

Heard Mrs.R.Hemalatha, the learned counsel for the petitioners and Mr.M.Hari Haran, the learned Additional Government Pleader for the first respondent and Mr.A.Ilangovan, the learned counsel appearing for the second respondent.

2. The first petitioner is the wife of the second respondent herein, and it appears that the second respondent deserted her and they have been living separately for several decades. Out of the wed lock with the second respondent, the

first petitioner has two children, who are the petitioner 2 and 3.

3. The issue, which falls for consideration in the Writ Petition is as to whether the first respondent can proceed further or not, pursuant to the impugned auction notice, dated 02.07.2012, bringing certain properties for sale for recovery of sales tax arrears payable by the second respondent, who was running turmeric business.

4. The petitioner's case is that, after she was deserted and living separately, she had filed a Suit in O.S.No.219 of 1976, on the file of the District Munsif Court, Sankari at Salem, and obtained a decree of partition, in which, the second respondent herein was the first defendant. According to the petitioner, the suit was decreed in her favour and certain properties have been allotted to her share, apart from certain properties, which were inherited by her children by succession. The petitioner has challenged impugned notice, on the ground that those properties are her absolute properties, and the same should not be brought in for auction for recovery of sales tax arrears payable by the second respondent.

5. An elaborate counter affidavit has been filed by the first respondent, and from paragraph No.5 of the counter affidavit, it is seen that the immovable properties, in which, the 2nd and 3rd petitioners each have got ½ shares, are comprised in S.Nos.79/2 and 79/13, measuring an extent of 1.16 acre and 0.36 acre respectively and the property, which is now brought for sale is comprised in S.Nos.79/2A, 79/4B, 79/4C and 80/5C. Therefore, it is submitted that the land, which is brought for sale, is the property of the second respondent, and that alone has been brought for auction and not the survey properties, which have been mentioned by the petitioner.

6. In the light of the stand taken in the counter affidavit, the Writ Petition is disposed of, by directing the first respondent not to bring the properties owned by the petitioners, either by way of partition or by inheritance for auction for recovery of the sales tax arrears payable by the second respondent. However, the first respondent is at liberty to proceed against the second respondent for recovery of the dues. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

dna/sd

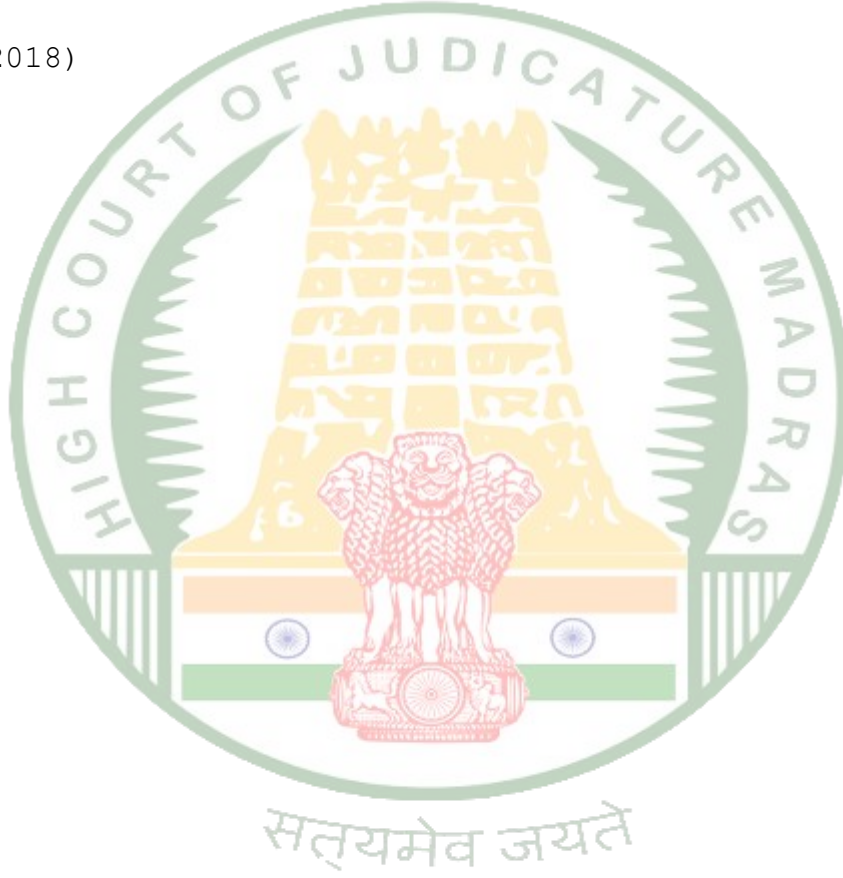
To

The Assistant Commissioner (CT)
Sangagiri, Salem District.

+1cc to Mr.R.Hemalatha, Advocate SR.No.5945
+1cc to Special Government Pleader SR.No.6710

Writ Petition No.24166 of 2012

GN(09/03/2018)



WEB COPY