

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

C.R.P.(NPD).No.3453 of 2018

and

C.M.P.No.19348 of 2018

Silambarasan

.... Petitioner

- Vs -

1.Komaralingam Town Panchayat,
Represented by its Executive Officer,
Madathukulam Taluk,
Tiruppur District.

T.K.Sivaprakasam (Died)

2. The District Collector,
District Collector Office,
Coimbatore.

3. The Tahsildar,
Tahsildar Office,
Udumalaipettai.

4. Palaniyammal
1st wife of (late) T.K.Sivaprakasam.

5. Ramathal
2nd wife of (late) T.K.Sivaprakasam

6. Kamatchi

7. Rajeswaran

8. Dhaneswari @ Dhanabakiyam

9. Thavamani

10. Selvi

11. Jagatheeswari @ Jagathambal

12. Maheswaran

13. Rathinakumari @ Kumari

14. Kamatchi Respondents

Prayer : Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.07.2018 passed in E.A.No.07 of 2017 in E.P.No.44 of 2015 in O.S.No.264 of 1993 by the District Munsif Court, Udumalaipettai as the same is liable to be set aside.

For Petitioner : Mr.S.Ramu

For 1st Respondent : Mr.S.Natana Rajan

For Respondents 2 & 3 : Mr.N.Manikandan
Govt. Advocate

For Respondents 4 to 14 : No Appearance

ORDER

The suit is filed for recovery of lease amount and for delivery of possession, came to be decreed on 07.11.2003. In the said judgment

and decree, the petitioner herein had filed a petition in E.P.No.44 of 2015 in the month of July 2015.

2. The petitioner herein had filed an application under Section 47 C.P.C. raising objection to the effect that the suit property does not belong to the 1st respondent herein but belong to the Revenue Department and the petitioner is already in occupation and possession of the same.

3. The court below had rejected the said application by referring to the evidence of the petitioner herein in the present suit wherein he had stated that he had admitted about the findings of the earlier suit wherein it has been held that the suit property did not belong to the Revenue Department, but to the respondent-Panchayat. The judgment and decree in the earlier suit in O.S.No.280 of 1987 has become final. It is based on this observation, and by relying upon the decision of this Court that the decree itself become final, the trial court had rejected the petitioner's obstruction petition.

4. The learned counsel for the petitioner reiterated the issues taken by him before the Execution Court that the suit property do not

belong to Panchayat but belong to Revenue Department and as such, they are not entitled to execute the decree.

5. On the other hand, the learned counsel for the 1st respondent/Panchayat would submit that the issue with regard to the title over the suit property were already decided in the findings in the earlier suit in O.S.No.280 of 1987 and since the findings has become final, the petitioner herein cannot re-litigate on the same issue once again in the guise of an obstruction petition.

6. It is seen that the decree in the present suit has not been challenged till date. The main ground raised by the petitioner herein touches upon merits of the suit which cannot be canvassed in an application under Section 47 of C.P.C. As pointed out by the trial court, in its judgment, even if the findings with regard to title are erroneous, the decree is still binding on the petitioner herein and as such, the same cannot be cured or re-visited through an obstruction petition under Section 47 C.P.C. The grounds raised by the petitioner herein are decided under Section 47 C.P.C. and as such, I do not find what reason as to interfere with the same. It is also seen that the findings of the Execution Court in rejecting the petitioner's application under

Section 47 C.P.C. does not suffer from any infirmity.

7. In view of the above, there is no merit in the present revision petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

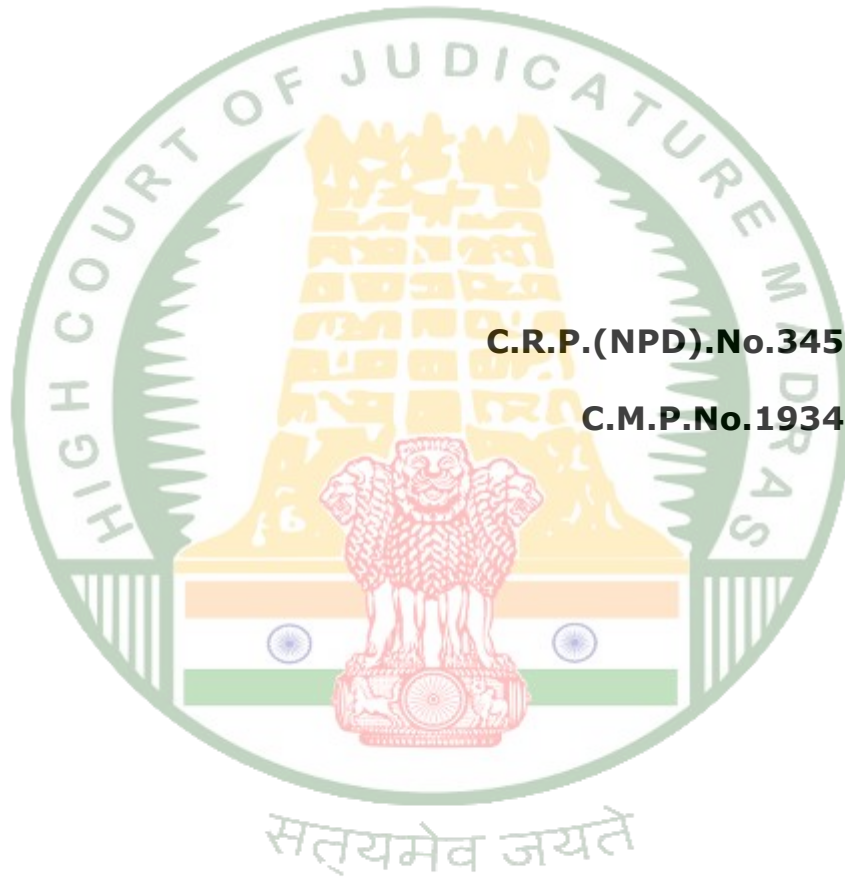
17.12.2018

Index:Yes / No
Internet:Yes / No
ssn

To

1. The District Munsif Court,
Udumalaipettai.
- 2.The Executive Officer,
Komaralingam Town Panchayat,
Madathukulam Taluk,
Tiruppur District.
3. The District Collector, सत्यमेव जयते
District Collector Office,
Coimbatore.
4. The Tahsildar, WEB COPY
Tahsildar Office,
Udumalaipettai.

M.S. RAMESH, J.,
ssn



C.R.P.(NPD).No.3453 of 2018
and
C.M.P.No.19348 of 2018

WEB COPY

17.12.2018