

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) Nos.1244 and 1245 of 2009
and M.P.No.1 of 2009

C.R.P.(PD) No.1244 of 2009

P.Subramanian

... Petitioner

Vs.

1. Rasayal
2. Umadevan
3. Thirumuruga Shankar
4. Kumaresan
5. Rani
6. Vembu
7. V.Kaliamoorthy

... Respondents

C.R.P.(PD) No.1245 of 2009

P.Subramanian

... Petitioner

Vs.

1. Umadevan
2. Kumaresan

... Respondents

PRAYER in C.R.P.(PD) No.1244 of 2009: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the order of the I

Additional Subordinate Judge, Cuddalore, dismissing E.P.No.51 of 2006 in O.S.No.182 of 1998 by order dated 28.11.2008.

PRAYER in C.R.P.(PD) No.1245 of 2009: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the order of the Additional Subordinate Judge, Cuddalore, allowing E.P.No.276 of 2007 in O.S.No.182 of 1998 by order dated 28.11.2008.

For Petitioner

in both C.R.Ps. : Mr.D.Baskar

For Respondents

in both C.R.Ps. : Mr.N.Selvaraju

COMMON ORDER

The present revisions have been filed as against the order passed by the Executing Court dismissing the Execution Petition under Section 47 of Civil Procedure Code, for arrest of the decree-holder on the ground that the decree obtained against judgment-debtor is inexecutable and no arrest can be ordered against them. The Executing Court allowed the above application, against which, the present revisions are filed.

Brief facts leading in the instant Revision are as follows:-

2. The suit has been filed by the revision petitioner against the defendants for passing a preliminary decree in respect of the mortgage said to have been executed by father of the respondents. The suit has been laid after the death of the mortgagor. The legal representatives of the mortgagor were arrayed as defendants. Though the revision petitioner has filed the suit for preliminary decree based on the mortgage, the trial Court disbelieved the mortgage deed. However, the trial Court has granted personal decree against the defendants, who are the legal representatives. Based on such a decree, Execution Petition is taken up for seeking arrest of the respondents. At this stage, an application under Section 47 of Civil Procedure Code has been filed. *Inter alia* contending that the decree is inexecutable and has not been passed in accordance with law. The Executing Court allowed the application, against which, the present revision is filed.

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3. The learned counsel appearing for the revision petitioner would contend that the suit has been decreed after full contest and no appeal has been filed. Therefore, they are entitled to execute such a decree. The order passed by the trial Court is not in accordance with law and it cannot go beyond the decree. Hence, the petitioners prayed to allow these revisions.

4. The learned counsel appearing for the respondents would contend that the judgment and decree is not in accordance with law and the personal decree could not have been passed against the defendants. Only the decree could have been passed for recovery of money from the assets of the father of the defendants. The trial court has erroneously passed such a decree, which is in fact against the law and the order of the Executing Court does not require any interference.

5. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

6. The Execution Petition has been filed seeking arrest of the decree-holder. It is to be noted that the suit has been laid on the basis of the mortgage said to have been executed by the father of the defendants. Originally, the suit has been laid for preliminary decree. However, the trial Court found that the mortgage has not been proved and has passed the personal decree against the defendants. Passing of such a personal decree itself is not in accordance with law. At the most, the trial Court should have directed that from the assets of the deceased, which are in the hands of the judgment-debtor, decree amount can be realized. No such direction was made in the decree, whereas, the judgment and decree has been passed as if the defendants are the parties to the contract and decree and judgment has been passed in personal capacity. Such a decree is inexecutable and even after the decree, the legal representatives shall be liable only to the extent of the property of the deceased, which came to their hands. It is being the position of the law, the Execution Petition filed for arrest of the judgment-debtor is illegal and cannot be maintained in the eye of law.

7. Therefore, I do not find any illegality and infirmity in the order passed by the Executing Court. No doubt, the Court cannot go beyond the decree. At the same time, the decree itself is illegal and inexecutable under law. The Executing Court has power to decide the above issue under Section 47 of Civil Procedure Code.

In view of the above observations, these Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order : Yes/No

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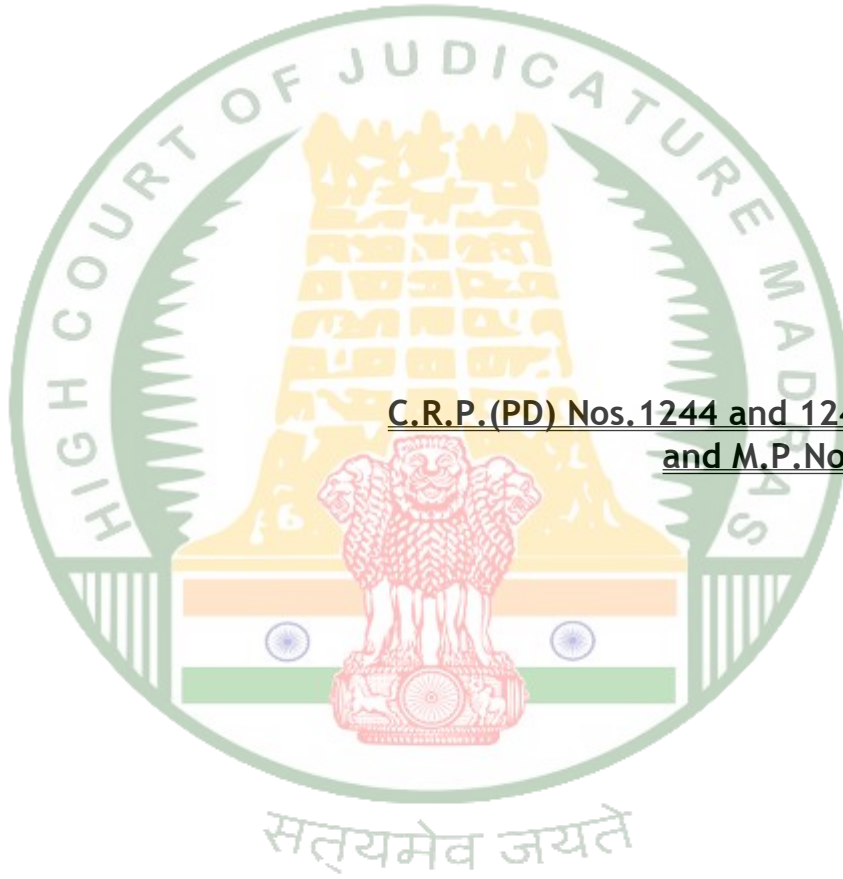
The I Additional Subordinate Judge,
Cuddalore.



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N. SATHISH KUMAR, J.

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