

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD)No.1364 of 2019

and

CMP.No.8899 of 2019

S. Lakshmi

... Petitioner

-VS-

L. Kuppusamy

...Respondent

Prayer: Civil Revision Petition filed under section 115 of the Civil Procedure Code praying to set aside the order dated 06.12.2018 made in E.P.No.7 of 2018 in O.S.No.39 of 2013 on the file of the District Principal and Sessions Judge, Dharmapuri.

For Petitioner : Mr. PA. Kadirvel

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Dharmapuri in E.P.No. 7 of 2018 in and by which the learned Judge has allowed the Petition filed for attaching the movable properties of the revision petitioner.

2. The brief facts are as follows: The plaintiff and the defendant had entered into an agreement of sale. Ultimately, since the sale deed was not executed the plaintiff who is the respondent herein had approached the Principal District and Sessions Judge, Dharmapuri in O.S.No.39 of 2013 for specific performance or in the alternative of direct to defendant to return the advance amount of Rs.36,01,000/- together with interest at 24 per cent at annum. The suit was decreed for the alternative relief directing the defendant/judgment debtor to pay the sum of Rs.36,01,000/- together with interest at 18 per cent per annum from the date of agreement till the date of realisation. As against the said decree, the defendant had file A.S.No.73 of 2015 and in the said Appeal, the Judgment and Decree in O.S.No.39 of 2018 was partly modified in that the rate of interest was reduced from 18 per cent per annum to 10 per cent per annum. Thereafter, the Decree holder/plaintiff had filed execution proceedings in E.P.No. 7 of 2018 on the file of the District Court, Dharmapuri for attaching and selling of the properties belonging to the revision petitioner which was detailed in the Petition. Response was filed by the judgment debtor stating that he had filed an Appeal before the Hon'ble Supreme Court and that there is a chance of some success in SLP. This submission was made on 30.08.2018. However, the learned District Judge after hearing both parties held that the defendant as DW1 had deposed that he is ready

to execute the sale deed and in case if the money had to be refunded he required six (6) months time.

3. Thereafter, there has been no payment from the defendant. The Court had also observed that there was no proof to show that any SLP was filed before the Hon'ble Supreme Court. Challenging the said order, the judgment debtor is before this Court.

4. The learned counsel would argue that the SLP has been filed on 05.03.2019, which means that the SLP has been filed with a delay. The decree holder has obtained the decree as early as on 08.01.2015 and till date he is unable to enjoy the fruits of the decree. It is also a settled principle of law that the executing Court cannot go beyond the decree. So long as the decree is not set aside, the executing court is bound to execute the said decree. Therefore, I do not find any infirmity in the order passed by the learned District Judge. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

09.04.2019

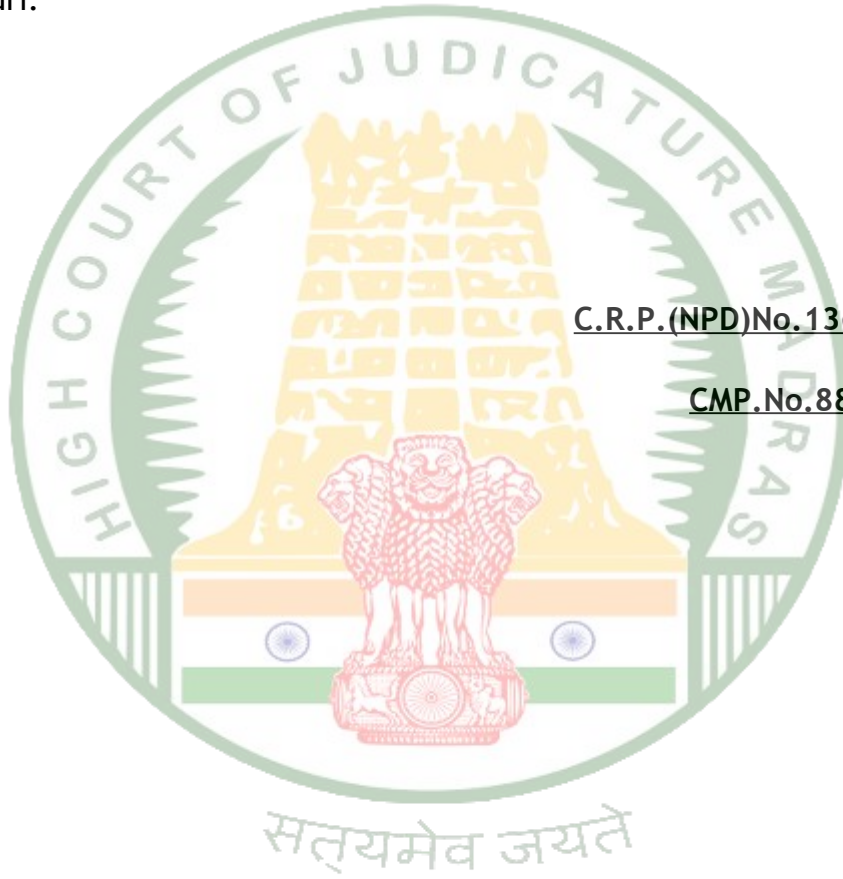
Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order

mrn

P.T. ASHA, J.,

mrn

To,
The District Principal and Sessions Judge,
Dharmapuri.



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