

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)Nos.2679 and 2680 of 2011
and M.P.No.1 of 2011

Rajalingam

..

Petitioner
[in both CRPs]

versus

1.Ezhumalai

2.Chinnathambi Chettiar

..

Respondents
[in C.R.P.No.2679/2011]

1.Chinnathambi Chettiar

2.Ezhumalai

..

Respondents
[in C.R.P.No.2680/2011]

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the common order dated 23.12.2010 made in E.A.Nos.216 and 160 of 2007 in E.P.No.166 of 2002 in O.S.No.225 of 2001 respectively on the file of the learned District Munsif, Madurantakam.

For Petitioner
[in both CRPs]

: Mr.N.R.Anantha Rama Krishnan

For Respondent No.1
[in both CRPs]

: Mr.Sesubalan Rajan

For Respondent No.
[in both CRPs]

: Dismissed for default

COMMON ORDER

These Civil Revision Petitions have been filed as against the common order passed by the learned District Munsif, Madurantakam in E.A.Nos.216 and 160 of 2007 in E.P.No.166 of 2002 in O.S.No.225 of 2001 respectively. C.R.P.[NPD]No.2679 of 2011 has been filed as against the order of the Execution Court dismissing the delivery of possession filed by the auction purchaser. Similarly, C.R.P.[NPD]No.2680 of 2011 has been filed as against the order allowing the petitioner to recall the delivery warrant.

2. It appears that the plaintiff has originally filed the suit for recovery of Rs.8,189/- and the suit was decreed in the Execution Proceedings, the entire one acre 20 cents belonging to the decree holder was purchased by the auction purchaser in the earlier round of litigation i.e. C.R.P.No.3011 of 2008, challenging the above sale, this Court considering the entire issue has set aside the entire order of the Courts below and once again, the matter is remitted back to the Execution Court for fresh consideration. The Execution Court has in fact allowed the application taking note of the fact for partial sum of Rs.8,189/-, the entire one acre 20 cents has been brought into auction, the portion of the property sold would have satisfied the decree.

3. Now it appears that the Execution Court based on the remand order passed by this Court in the above C.R.P. has passed the common order and dismissed the application [E.A.No.160 of 2007] filed by the auction purchaser for delivery of possession. Similarly, the judgment debtor's application [E.A.No.218 of 2007] to recall the delivery warrant is allowed and the sale is also set aside under Order 21 Rule 64 and Section 47 of the Code of Civil Procedure. As against which, these two Civil Revisions Petitions have been filed by the revision petitioner.

4. It is to be noted that the earlier round of litigation itself, this Court has held categorically in C.R.P.No.3011 of 2008 that the sale in respect of the entire property is not valid, the only portion of the property would have been sufficient to satisfy the decree. Only based on the order, the Execution Court has dismissed the application filed by the auction purchaser for delivery of possession in E.A.No.160 of 2007. Similarly, E.A.No.216 of 2007 has allowed to recall the delivery warrant in view of the fact that the sale itself found to be not valid.

5. Admittedly, the Execution Court has set aside the sale under Section 47 of the Code of Civil Procedure. In view of the same, the auction purchaser now cannot challenge the above orders dismissing the application for delivery of possession and also recalling the warrant. Since the very sale in respect of one acre 20 cents held to be not valid in earlier litigation by this Court in C.R.P.No.3011 of 2008, this Court does not find any error or infirmity in the order of the Execution Court. As far as setting aside the entire sale is concerned, it is for the auction purchaser to work out his remedy in C.M.A., which is already filed.

6. With these observations, both the Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

29.03.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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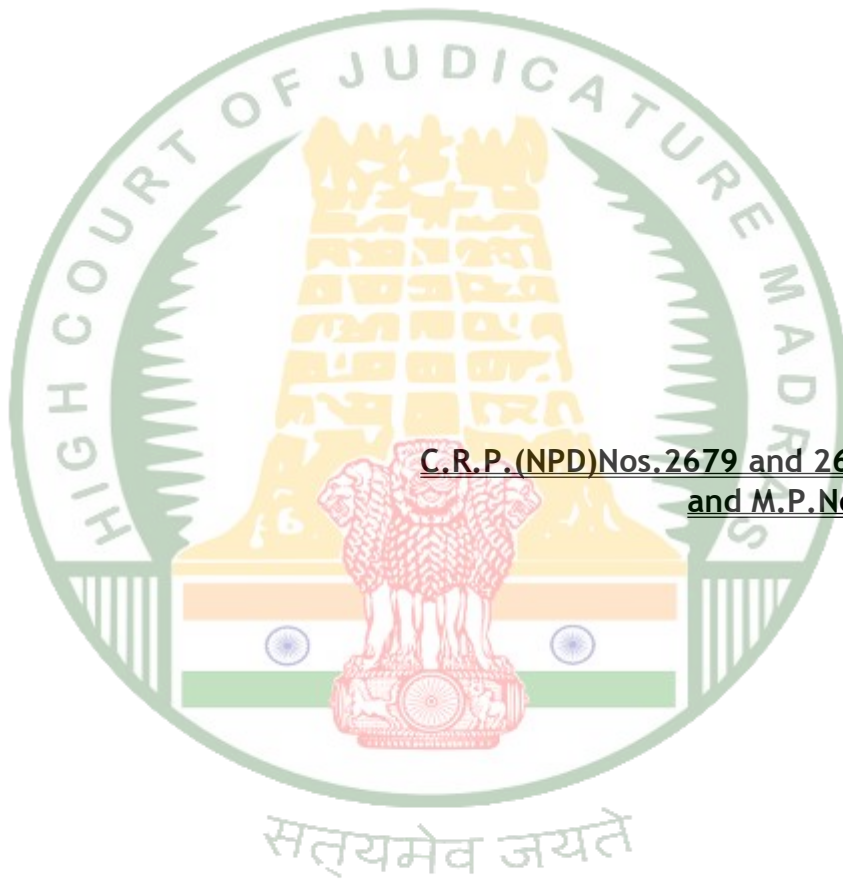
To

The District Munsif,
Madurantakam.



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N.SATHISH KUMAR, J.,
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C.R.P. (NPD) Nos. 2679 and 2680 of 2011
and M.P. No. 1 of 2011

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