

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.4274 of 2011
and M.P.No.1 of 2011

N.Kuppusamy ... Petitioner/ Petitioner/Judgment Debtor

Vs.

1.Rani
2.Dhanalakshmi
3.Janardhanan
4.Minor Bagyalakshmi
5.Minor Mahalakshmi
6.Minor Rahul Gandhi

... Respondents/ Respondents Decree Holder
(Minors 4 to 6 rep by 1st respondent)

Petition filed under Section 115 of the Code of Civil Procedure against the fair order and decreetal order dated 28.03.2011 passed in E.A.No.67 of 2005 in E.P.No.50 of 2000 in O.S.No.60 of 1996 on the file of the I Additional Subordinate Court, Cuddalore.

For Petitioner : Mr.D.Baskar
For Respondents : R1 to R3 - refused
(minors R4 to R6 rep by R1)

O R D E R

Challenging the order passed in E.A.No.67 of 2005 in E.P.No.50 of 2000 on the file of the I Additional Sub Court, Cuddalore, subsequently, transferred to the file of the District Munsif Court, Cuddalore and re-numbered as E.P.No.79 of 2004, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.60 of 1996 on the file of the Sub Court, Cuddalore for recovery of a sum of Rs.71,120/- together with future interest. After contest, the trial Court decreed the suit on 04.08.1999. Pursuant to the decree obtained by the respondent/plaintiff, he filed an Execution Petition in E.P.No.50 of 2000 on the file of the Additional Sub Court, Cuddalore, which was subsequently transferred to the file of the District Munsif Court, Cuddalore in E.P.No.79 of 2004. In the said Execution Petition, the defendant took out an application in E.A.No.67 of 2005

under Section 47 of the Code of Civil Procedure stating that he had paid the entire decree amount to one Panchamoorthy from whom he originally borrowed the money. The suit was filed by one V.Ramu, who had died after the passing of the decree and the respondents are his legal representatives.

3.It was the case of the plaintiff that the defendant borrowed money from Panchamoorthy, who had assigned the debt in favour of the plaintiff. The suit was decreed only in favour of the plaintiff and not in favour of the assignor. Such being the case, the defendant should have paid the amount only to the plaintiff who had obtained a decree as against him and not to the assignor of the debt. According to the defendant, he had paid the money only to Panchamoorthy and not to the plaintiff. In such circumstances, the defendant has filed an application under Section 47 of the Code of Civil Procedure to annul the entire proceedings in E.P.No.79 of 2005.

4.The plaintiff's legal representatives viz., the respondents herein have filed their counter disputing the averments stated in the affidavit filed in support of the petition. The respondents have specifically stated that any amount paid to a 3rd party other than a decree holder is not a valid discharge of the decree and that the amount should not be adjusted towards the Execution Petition.

5.That apart, admittedly, the plaintiff/decreed holder has not given any authorization to Panchamoorthy to receive the money on his behalf. When the decree stands in favour of the plaintiff, the assignor of the debt viz., Panchamoorthy has no role to play in receiving the money on his own. Even according to the defendant, it was only the Panchamoorthy who had participated in the alleged panchayat. Since the decree amount was not discharged by paying the amount to the decree holder, the Executing Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

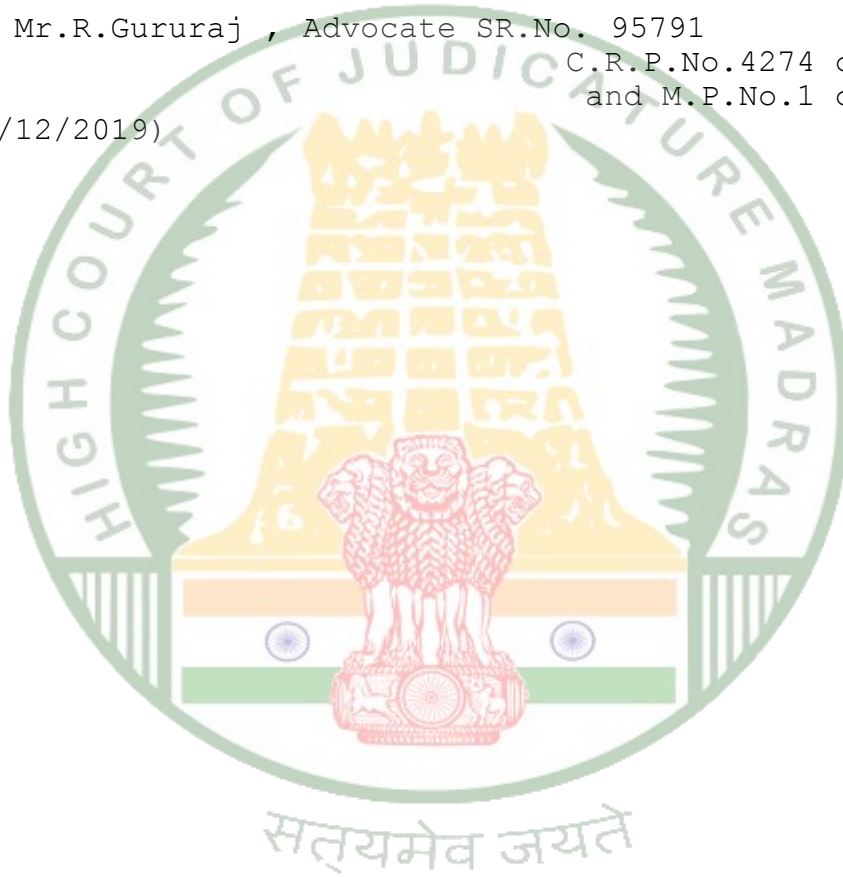
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To

The I Additional Sub Judge,
Additional Subordinate Court, Cuddalore.

Copy to:
The Section Officer,
VR Section, High Court, Chennai.

+lcc to Mr.R.Gururaj , Advocate SR.No. 95791
C.R.P.No.4274 of 2011
and M.P.No.1 of 2011
A.SK(18/12/2019)



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