

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 23.09.2019

Pronounced On : 18.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

CRP(NPD) Nos.4311 of 2011 & 2150 & 2151 of 2015

and

M.P.No.1 of 2011 in CRP (NPD) No.4311 of 2011

M.P.No.1 of 2015 in CRP (NPD) No.2150 of 2015

CRP (NPD) No.4311 of 2011

1. Periyammal
2. Tamilselvi
3. Rajendiran
4. Gunasekaran
5. Chinnaponnu
6. Chandran
7. Gnanavel
8. Jayavel

.. Petitioners

सत्यमेव जयते
Vs

1. V.Rajamani
2. E.Ethirajulu

.. Respondents

PRAYER: Civil Revision Petition filed under under Section 115 of Code of Civil Procedure, to set aside the fair and Decreetal order dated 12.08.2011 made in R.E.A.No.163 of 2011 in R.E.P.No.237 of 2004 in O.S.No.514 of 1983, on the file of the learned First Additional Subordinate Judge, Salem.

CRP (NPD) Nos.2150 & 2151 of 2015

1. Periyammal
2. Tamilselvi
3. Rajendiran
4. Gunasekaran
5. Chinnaponnu
6. Chandran
7. Gnanavel
8. Jayavel

... Petitioners in both CRPs

Vs

1. Ramanujam
2. Jagadeesan
3. V.Rajamani
4. E.Ethirajulu

... Respondents in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Code of Civil Procedure, to set aside the fair and Decreetal order dated 24.04.2015 made in R.E.A.Nos.14 of 2012 & 145 of 2013 in R.E.P.No.237 of 2004 in O.S.No.514 of 1983, on the file of the learned First Additional Subordinate Judge, Salem.

For Petitioners : Mr.D.Shivakumaran
in all CRPs.

For Respondents : Mr.S.Parthasarathy, Sr. Counsel
for Mr.M.Rajasekhar
(for R1 & R2 in CRP No.4311/11 and
R3 & R4 in CRP Nos.2150 & 2151/15)
Mr.V.Narayanaswami
for Mr.B.Vijayakumar
(for R1 & R2 in CRP Nos.2150 & 2151/15)

COMMON ORDER

Aggrieved over the orders passed in REA Nos.163 of 2011, 14 of 2012 & 145 of 2013 in R.E.P.No.237 of 2004 in O.S.No.514 of 1983, on the file of the learned First Additional Subordinate Judge, Salem, the petitioners, who are the decree holders in the above said suit, have preferred these Civil Revision Petitions and prayed to set aside the orders dated 12.08.2011 and 24.04.2015 passed in the above referred REA Nos.163 of 2011, 14 of 2012 & 145 of 2013, respectively.

2. Originally Ayyavoo Udayar, is the sole plaintiff in OS.No.514 of 1983. He has filed a suit as against the respondents in these Civil Revision Petitions, for the relief of specific performance. After elaborate trial, decree was granted in favour of the plaintiff viz., Ayyavoo Udayar, against which, the respondents 1 and 2/defendants preferred an appeal before this Court in A.S.No.469 of 1986. The appeal preferred by the respondents 1 and 2 herein/defendants, was dismissed. However, since the sole plaintiff viz., Ayyavoo Udayar, died during the pendency of the first appeal, the revision petitioners, who are his legal representatives, have been impleaded as a party to the proceedings. They will be referred hereinafter as revision petitioners/decreed holders.

3. Before the suit, the deceased Ayyavoo Udayar and the respondents 1 and 2/defendants, entered into an agreement of sale dated 30.06.1980, whereby the respondents 1 and 2/defendants, in the suit agreed to sell the suit property to Ayyavoo Udayar for Rs.67,000/-. Ayyavoo Udayar admittedly paid an advance of Rs.10,000/- and agreed to pay the balance of Rs.57,000/- on or before 15.11.1980. Respondents 1 and 2/defendants agreed to execute a sale deed, free of all encumbrance in favour of Ayyavoo Udayar. Respondents 3 and 4 viz., Rajamani and Ethirajulu, have been added as defendants 3 and 4, in the suit for the reason that after executing the suit sale agreement, the defendants 1 and 2 inducted respondents 3 and 4 in possession of the suit property with an idea to dodge execution of sale deed and to hand over delivery of possession of the suit property.

4. The respondents 1 and 2/defendants admitted the execution of the sale agreement. The respondents 3 and 4/defendants remained exparte. After contest by respondents 1 and 2/defendants, the suit was decreed on 02.04.1986, directing the respondents 1& 2/defendants to execute the sale deed within one month and further directed the defendants to deliver possession of the suit property to the plaintiff, besides granting other reliefs.

5. After disposal of the appeal (AS No.469 of 1986) the respondents 1 and 2/defendants filed LPA No.62 of 2001, challenging the judgment of the learned Single Judge. The LPA was disposed of on 19.03.2004, confirming the judgment of the learned Single Judge with one modification to the decree, directing the petitioners herein (respondents 3 to 10 in LPA) to deposit a further sum of Rs.67,000/- in addition to the sale consideration of Rs.67,000/- as per the sale agreement.

6. In obeying the orders passed by this Court, the revision petitioners/decreed holders deposited Rs.67,000/- to the credit of the suit. The respondents 1 and 2/defendants, filed SLP No.18184/2004, before the Hon'ble Supreme Court, challenging the judgment of the Hon'ble Division Bench in LPA No.62 of 2001. The SLP was dismissed on 20.01.2006. The Review Petition (Civil) No.359 of 2006 in SLP No.18184/2004, was also dismissed on 18.04.2006.

7. Subsequent to the dismissal of SLP, the revision petitioners/decreed holders filed REP No.237 of 2004, on the file of the Additional Subordinate Court, Salem, to direct the respondents/defendants in the Execution Petition, for execution of the sale deed and for delivery of possession. In Column No.9 of the Execution Petition, it was added in writing "1 and 2". However, REP No.237 of 2004, was dismissed on 03.12.2004. Hence, the

revision petitioners/decreed holders filed CRP No.2032 of 2005, to set aside the order dated 03.12.2004 made in REP No.237 of 2004 and the Civil Revision Petition, was allowed on 21.02.2006.

8. In the meantime, the revision petitioners/decreed holders filed REP No.244 of 2005 for getting the sale deed executed and for delivery of possession. As the dismissal of the earlier REP No.237 of 2004 was set aside and restored, by this Court, the revision petitioners/decreed holders withdrew the second REP No.244 of 2005 and the further proceedings in the execution of the decree were continued in REP No.237 of 2004.

9. The executing Court executed the sale deed on 17.08.2007. In the sale deed the respondents 3 and 4 / defendants, were also included as vendors. The respondents 1 and 2/ defendants filed a Civil Revision Petition in CRP No.3916 of 2007, challenging the inclusion of the names of Rajamani and Ethirajulu, who are respondents/defendants 3 and 4, along with them, as vendors. The revision petitioners/decreed holders expressed no objection for deletion of the names of Rajamani and Ethirajulu, as vendors in the sale deed and thereafter, a rectification deed was executed on 25.01.2008, deleting the name of the respondents 3 and 4/defendants, as vendors.

10. Thereafter, in continuation of the execution proceedings, order for delivery of possession, was passed on 12.02.2008. When the Bailiff and others went to the property on 20.02.2008, for effecting delivery, the 3rd respondent Rajamani obstructed the delivery of possession by pouring kerosene on himself and threatened that he would immolate himself, if delivery is effected. Hence, delivery could not be effected. However, on 12.03.2008, within one month thereafter, Rajamani and Ethirajulu filed REA No.163 of 2011 in REP No.237 of 2004, a petition under Section 47 CPC, claiming the title over the suit property.

11. Though the respondents 3 and 4/defendants were added as a party in the execution petition, no notice was served upon them. Even after the restoration of REP No.237 of 2004, no notice was served upon respondents 3 and 4/defendants. Ultimately, the petition filed under Section 47 CPC in REA No.163 of 2011, was allowed, for the sole reason that no notice was sent to Rajamani and Ethirajulu, respondents 3 and 4/defendants, respectively. Thereafter, the revision petitioners/decreed holders filed REA No.14 of 2012 to incorporate the following amendment in the Execution Petition viz., REP No.237 of 2004.

- (1) In Column No.4 after B.R.No.41 dt. 19.4.2004 please add “SLP (Civil) 18184/2004 in Supreme Court of India dismissed on 20.01.2006 and the Review Petition (Civil) No.359/2006 in SLP

(Civil) 18184/2004 Supreme Court dismissed on 18.4.2006. Both filed by the JDs 1 and 2 against the JDs 3 & 4 and the petitioners.

- (2) In the petition in REP 237/2004 in Column No.9 after the words “respondents 1 and 2” please add “for execution of the sale deed and against all the respondents for delivery of possession.”
- (3) In Column No.10 after the words “pleased to direct the respondents” please add “1 and 2”.
- (4) In Column No.10 after the word on behalf of the respondents please add “1 and 2”.
- (5) In Column No.10 after the work “directing” please delete word “them” and in its place add “all the four respondents”

12. The revision petitioners/deGREE holders have also filed another amendment application in REA No.145 of 2013 in REP No.237 of 2004, which is as follows:

- (1) In Column No.6, in the original petition, please delete the word 'Nil'.
- (2) In Column No.6, please add
 - 1) REP 128 of 1988 to arrest the respondent for realization of costs. Dismissed on 30.11.1989 as J.D. Not found.
 - 2) “R.E.P.No.234 of 1984 - to attach the property of defendant No.1 for realization of costs. Amount deposited and the E.P. was closed.”

13. The learned First Additional Subordinate Judge, Salem, after affording an opportunity to the respondents herein dismissed the amendment applications viz., REA Nos.14 of 2012 and 145 of 2013, by

holding that there is no appeal or revision preferred against the order passed in the application viz., REA No.163 of 2011, filed under Section 47 CPC and therefore, the order passed in the said REA, which is under Section 47 CPC becomes final, conclusive and binding upon the parties and therefore, the question of amendment, does not arise. Only in the said circumstances, against the order passed in the application filed under Section 47 CPC and against the orders passed in the applications filed for amendments, referred above, the petitioners are before this Court with the present Civil Revision Petitions.

14. Today, when the Civil Revision Petitions came up for hearing, the learned counsel appearing for the revision petitioners/deed holders would contend that when the trial Court has granted a decree for execution of sale deed by respondents 1 and 2/defendants and for delivery of possession by all the respondents/defendants, it was challenged up to Hon'ble Supreme Court, by way of SLP, and also review and has become final. At this stage, the same cannot be agitated by respondents 3 and 4/defendants, who have acquired knowledge about the execution proceedings. They cannot say that the decree is not binding upon them. The decree for specific performance granted against respondents 1 and 2/defendants, for execution of the sale deed and also for delivery of possession to the decree holders, will automatically bind the respondents 3 and 4/defendants, who according to

their claim are cultivating tenants and who have clearly admitted the ownership of the 1st respondent/defendant, over the suit property.

15. Learned counsel appearing for the revision petitioners/decreed holders would further submit that the decree for specific performance against respondents 1 and 2/defendants, will thus bind respondents 3 and 4/defendants, also. As such the respondents 3 and 4/defendants are only obstructors and the obstruction by them without any title, cannot give them any right to challenge the execution in any manner. By any stretch of imagination, the prayers sought for in the REAs can never be misinterpreted as an illegality or fraud played upon the Court, as misrepresented by the respondents 3 and 4/defendants. The decree has not granted any right or title to the respondents 3 and 4/defendants, to make a claim that the decree is not binding on them. If at all the respondents 3 and 4/defendants, have a right as a cultivating tenant, they have to work out their remedy as against the respondents 1 and 2/defendants. But the executing Court without considering those aspects allowed the application viz., REA No.163 of 2011, filed by the respondents 3 and 4, which is under Section 47 CPC.

16. Learned counsel appearing for the revision petitioners/decreed holders would further contend that since the decree is passed after

including the names of the respondents 3 and 4/defendants, amending the executing proceedings, as per the prayer sought for in REA Nos.14 of 2012 and 145 of 2013, is nothing illegal. On that area also, the learned First Additional Subordinate Judge, Salem, misconstrued the facts and dismissed the application filed by the revision petitioners/deGREE holders, for amendment.

17. In support of argument advanced by the learned counsel appearing for the revision petitioners/deGREE holders, he relied on the judgment in **S.Sampoornam and another Vs. P.V.Kuppuswamy & 8 others**, reported in 2007 (3) CTC 529, in which, this Court has held that once a decree for specific performance is decreed, execution of sale deed and delivery of possession, is consequential. Further, it was held that the claim of the defendants under Section 47 CPC, without any title to the properties, is legally unsustainable.

18. Learned counsel appearing for the revision petitioners/deGREE holders has further relied on the following judgments of our Hon'ble Apex Court and this Court.

(i) In **General Instruments Company Vs. Union of India & Others**, reported in 2008 (11) SCC 775, our Hon'ble Apex Court, has held as follows:

“26. It is trite that no man should suffer a wrong by technical

procedure of irregularities. The rules or procedures are the handmaids of justice and not the mistress of the justice.”

(ii) In *K.Palanisamy Vs. K.Paramasivam & Others*, reported in CDJ

2011 MHC 4331, this Court has held as follows:

20. It is thus clear that the Legislature has given ample power to the court to allow amendment of the plaint at any stage, including the execution proceedings. In the instant case the High Court granted the relief of possession and the objection raised on behalf of the petitioner is that this was not possible at the execution stage and in any case the Court should have allowed first an amendment in the plaint and then an opportunity should have been afforded to the petitioner to file an objection.

21. it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract.

29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections.

Citing the above judgment learned counsel for the revision petitioners/decreed holders submitted that the prayer for amendment of execution petition, is maintainable, particularly when it is only to elucidate the two clauses in the decree with more clarity.

(iii) In ***Sivasamy Vs. Raju Mudaliar and Others***, reported in (2004)

2 MLJ 724, this Court has held as follows:

“It is well settled proposition of law that the Executing Court cannot go behind the decree and probe any claim of title to and possession of the property involved in the execution proceedings. On the contrary, the impugned orders and the affidavits and the petitions filed by third parties seeking amendment of the execution proceedings would indicate that the relief sought for exceeds the legal limits prescribed by Section 47 of the Civil Procedure Code for the simple reason that they have virtually prayed for declaration of their title to and delivery of possession of the property described in the said applications.”

(iv) In ***Shri Nirmal Enem Horo Vs. Smt.Jahan Ara Jaipal Singh***, reported in (1973) **2 Supreme Court 189**, our Hon'ble Apex Court has held as follows:

“9.... In these circumstances we do not consider that such a point can be allowed to be agitated for the first time before this Court.”

(v) In ***C.T.A. C.T.Nachiappa Chettiar Vs. M.G.Ramaswami Pillai***, reported in **AIR 1964 Madras 236**, this Court has held as follows:

“If there is no injustice to the other side, and the amendment of pleadings or enlargement of reliefs of execution is necessary for the purpose of determining the real question in controversy between the parties, the amendments should be permitted and not refused.
(S) AIR 1957 SC 357 and (S) AIR 1957 SC 363 Rel on AIR 1947 Mad 216

Dist.”

19. Now, resisting the claim made by the learned counsel for the revision petitioners/decreed holders, the learned senior counsel appearing for the respondents 1 and 2/defendants, would submit his case that it is a well settled proposition of law that the executing Court cannot go beyond the decree. In this case, the revision petitioners/decreed holders after knowing the fact that a decree has been passed as against all the respondents, they did not take any steps for serving summons to respondents 3 and 4/defendants. So, the execution petition filed by the revision petitioners/decreed holders, is against the clauses made in the decree. Therefore, the respondents 3 and 4/defendants are entitled to file an application in REA No.163 of 2011, under Section 47 CPC. Only in the said circumstances, the Court below have come to the conclusion that the application filed under Section 47 CPC, is maintainable. Now, it cannot be said that the execution petition has been filed as against respondents 3 and 4/defendants. More than that virtually after allowing the application filed under Section 47 CPC, the execution petition has to be closed and subsequent applications for amendment, cannot be maintained.

20. The learned counsel appearing for the respondents 3 & 4 /defendants would further contend that the possession of the respondents 3 and 4/defendants, in the suit property was admitted by the revision petitioners/deGREE holders, in the plaint itself. The decree has also been passed as against the respondents 3 and 4 also. So, it is the fundamental duty of the revision petitioners/deGREE holders to send notice to respondents 3 and 4 / defendants. But in REP No.237 of 2004, filed by the revision petitioners/deGREE holders, they have not taken any steps for serving notice to the respondents 3 and 4/defendants. Since the possession of respondents 3 and 4 is admitted by the revision petitioners/deGREE holders, in the plaint itself, they become necessary party to the execution proceedings. On going through the impugned order passed in REA No.163 of 2011, only because of the said reason, for not serving notice to the respondents 3 and 4 /defendants and since the revision petitioners/deGREE holders have asked no relief against respondents 3 and 4, the application filed by the respondents 3 and 4/defendants in REA No.163 of 2011 under Section 47 CPC is allowed and therefore, there is no material irregularity found in the orders passed by the Court below.

21. Upon considering the arguments advanced by either side, it appears that the revision petitioners/deGREE holders have filed a REP

No.237 of 2004 on 19.07.2004 for the relief to direct the respondents/defendants to execute the sale deed and to deliver possession. In the said execution petition, though all the four respondents were shown as respondents/defendants in clause no.9, it is mentioned that the relief asked is against respondents 1 and 2 only. Only because of the said reason that no relief is asked against respondents 3 and 4, the Court below, has not ordered notice to respondents 3 and 4/defendants. Though the said execution petition is filed against respondents 1 and 2 / defendants, they did not come forward to execute the sale deed and hence, the Court itself had executed a sale deed on 17.08.2007, on behalf of all the four respondents.

22. However, the respondents 1 and 2/defendants filed CRP No.3916 of 2007 before this Court, to set aside the sale deed. When the said Civil Revision Petition came up for hearing, the learned counsel for the decree holders accepted the above said circumstances and filed a memo to modify the above said mistakes in the sale deed dated 17.08.2007 and therefore, the names of respondents 3 and 4/defendants were deleted in the sale deed. Only thereafter, the Court below passed an order of delivery.

23. Accordingly, when the Court Amin went to the suit property for executing the delivery warrant, respondents 3 and 4 / defendants raised

their objection by saying that they are in possession. In otherwise, there is no order passed against them. After hearing the same, the Court Amin returned the warrant. In the meantime on 12.03.2008, respondents 3 and 4 / defendants filed petition under Section 47 of CPC and the same was numbered as REA No.163 of 2011. In the said petition, they took a stand that though they are in possession of the suit property, no notice was served on them in REP No.237 of 2004. For the said REA, the decree holders filed a counter stating that respondents 3 and 4/defendants, are not in possession.

24. In this connection, it is relevant to see the copy of the plaint, which was filed by the Ayyavoo Udayar. In fact the original plaintiff Ayyavoo Udayar, had admitted in the plaint itself that the respondents 3 and 4 / defendants are in the possession. More specifically it is stated in paragraph No.10 of the plaint that respondents 3 & 4 / defendants are added in order to avoid any possible obstruction by them and to enable the plaintiff to take delivery of possession without multiplicity of proceedings.

25. Even after knowing the possession of the respondents 3 and 4 / defendants, in the earlier occasion, after so many years, the decree holders, purposely did not ask the Court to send notice to respondents 3 and 4 / defendants. In fact the decree has also been passed against the

respondents 3 and 4 /defendants, in which the respondents 3 and 4 / defendants, are directed to hand over possession to the decree holders. Only taking into consideration of the same, the learned First Additional Subordinate Judge, Salem, had allowed the REA No.163 of 2011 vide order dated 12.08.2011, by holding that since, no notice is served to respondents 3 and 4/defendants, the Court cannot pass any order directing the respondents 3 and 4/defendants, to deliver possession and thereby their right of possession, is no way effected. Therefore, this Court is of the considered view that the said proposition taken by the Court below do not have any material irregularity.

26. However, it is the duty of the Court below to dismiss the REP No.237 of 2004, after allowing the application filed in REA No.163 of 2011 (47 CPC). But the learned First Additional Subordinate Judge, Salem, without following the consequential procedure, allowed the revision petitioners / decree holders to file applications for amending the execution petition. Since the right of the respondents 3 and 4 / defendants are determined in REA No.163 of 2011, the question of subsequent amendment in the same EP (REP No.237 of 2004) in Column No.10 virtually does not arise on the date. So far as respondents 3 and 4 are concerned, no execution petition was pending. Under the said circumstances, amendment petitions are not maintainable. Therefore, this Court is of the firm view

that the amendment applications filed in REA Nos. 14 of 2012 and 145 of 2013, are not maintainable in limine.

27. The decree holders should have taken steps to amend the execution petition atleast after seeing the defense set up by the respondents 3 and 4/defendants in the REA No.163 of 2011. But they have not taken any steps to amend the execution petition till the disposal of application filed under Section 47 CPC. More than that, the decree holder / revision petitioners, after knowing the result of REA No.163 of 2011 in the year 2011, till 2015 they have not preferred any appeal against the order passed in the petition filed under Section 47 CPC. The reason for not filing the appeal or revision, immediately, is not explained on the side of the revision petitioners/decreed holders. Though the procedure is meant to advance cause of justice, it is for the litigants to watch the proceedings, then and there, without any delay, with care and vigil.

28. Therefore, in the light of the above discussions, this Court is of the opinion that the impugned order passed in the petition filed under Section 47 CPC is not having any material irregularity and thereby, the order dated 12.08.2011 made in REA No.163 of 2011 in REP No.237 of 2004 in OS No.514 of 1983, is sustained and CRP No.4311 of 2011, is dismissed.

29. Further, as already observed, after allowing the application filed under Section 47 CPC, the Execution Petition has to be closed. But for the reasons best known, the execution petition filed by the revision petitioners/decreed holders was kept alive and thereafter, the revision petitioners/decreed holders took the applications for amendment. In fact, the same is not maintainable. Therefore, the orders dated 24.04.2015 made in REA Nos.14 of 2012 and 145 of 2013 in REP No.237 of 2004 in OS No.514 of 1983, are also sustained and CRP Nos.2150 & 2151 of 2015, are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

18.12.2019

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

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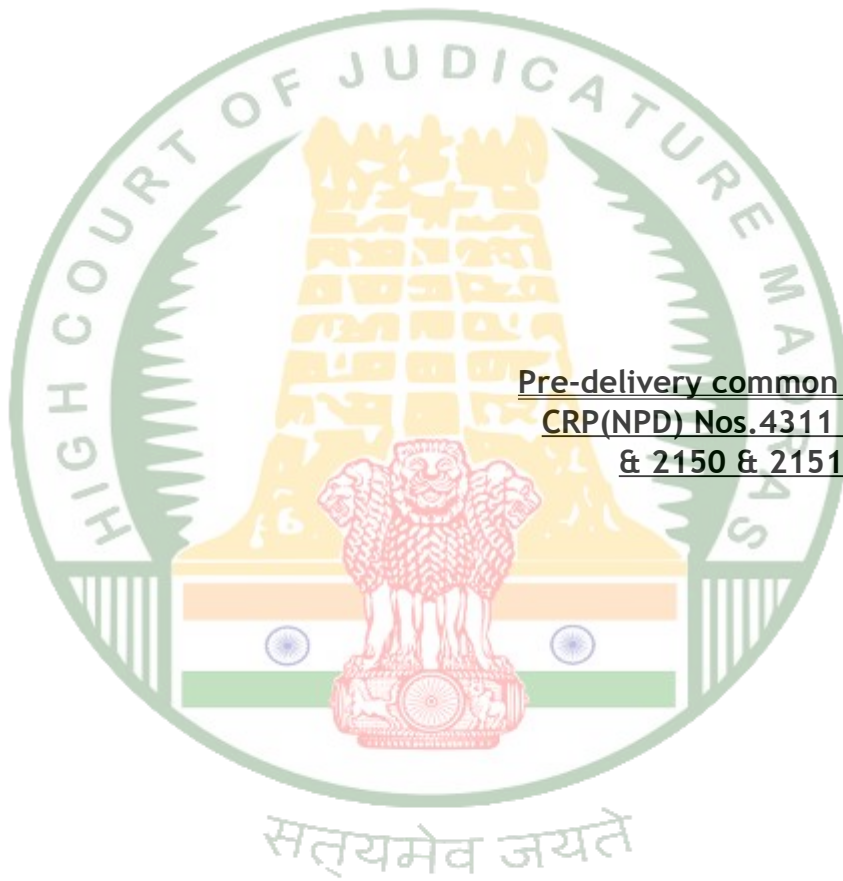
To

The First Additional Subordinate Judge, Salem.

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R.PONGIAPPAN, J.,

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Pre-delivery common order in
CRP(NPD) Nos.4311 of 2011
& 2150 & 2151 of 2015

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18.12.2019