

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.07.2018

Delivered on: 13.06.2019

CORAM

THE HONOURABLE THIRU JUSTICE P.VELMURUGAN

C.R.P.(NPD) No.1220 of 2018 &
CMP No.6245 of 2018

Kuppusamy

.... Petitioner

- Vs -

1. Balakrishnan

2. N.Palaniappan

3. Karthikeyan

4. Abiramiammal

.... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 05.02.2018 made in E.A.No.338 of 2016 in E.P.No.33 of 2010 in O.S.No.207 of 2005 on the file of the Principal District Munsif Court (F.A.C), Vridhachalam.

For petitioner : Mr.T.L.Thirumalaisamy

For respondents : Notice Served No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 05.02.2018 made in E.A.No.338 of 2016 in E.P.No.33 of 2010 in O.S.No.207 of 2005 on the file of the Principal District Munsif Court (F.A.C), Vridhachalam.

2. The revision petitioner is the petitioner in EA.No.338 of 2016 and third party in EP.No.33 of 2010 in O.S.No.207 of 2005. The first respondent is the decree holder in E.P.No.33 of 2010 and plaintiff in the suit in O.S.No.207 of 2005. The respondents 2 to 4 are judgment debtors in the said EP and defendants in the above said suit. It can be seen from the records that the first respondent herein filed the suit against the respondents 2 to 4 herein in O.S.No.207 of 2005 before the District Munsif Court, Vridhachalam. The said suit was decreed in favour of the first respondent herein and against the respondents 2 to 4. The first respondent filed an Execution Petition before the Principal Munsif Court, FAC, Vridhachalam in E.P.No.33 of 2010 in O.S.No.207 of 2005 for execution of decree. The revision petitioner herein, as a third party, filed a claim petition under Order 21 Rule 58 of CPC in E.A.No.338 of 2016 stating that he purchased the property from the respondents 2 to 4/judgment debtors under registered Sale deed on 17.09.2013 for valuable consideration of Rs.3,50,000/-. Subsequently, when he heard about the judgment of the property, he applied for Encumbrance

Certificate, in which, he found that his property was attached on 09.05.2016. Since the revision petitioner was not a party in the Execution Petition as well as in the suit, he filed the claim petition under Order 21 Rule 58 of CPC in E.A.No.338 of 2016. The learned District Munsif, Vridhachalam, after giving opportunity, dismissed the petition filed by the petitioner therein on 05.02.2018. Challenging the said order, the petitioner is before this Court by way of the present revision.

3. The learned counsel for the petitioner would submit that the petitioner purchased the property from the lawful owner under registered Sale Deed dated 17.09.2013 for valuable consideration of Rs.3,50,000/-. On the date of purchasing the property, he was not aware about the litigation between the first respondent and the respondents 2 to 4 and also the decree obtained by the first respondent against the respondents 2 to 4. The revision petitioner, as a third party, purchased the suit property. Therefore, the judgment against his property is not valid one. The trial Court failed to consider the fact that the revision petitioner purchased the property from the judgment debtors/respondents 2 to 4 much prior to the decree in respect of the subject property. The learned counsel further submitted that the petitioner is the *bona fide* purchaser, without notice, for valuable consideration, the property cannot be attached. On the date of judgment, the property was not belonging to the respondents 2 to 4/judgment debtors. The

learned District Munsif simply dismissed the petition on 05.02.2018 on the ground that the petitioner has not proved that he is the *bona fide* purchaser, which warrants interference.

4. The case of the respondents is that the respondents 2 to 4 obtained a loan from the first respondent. Since the first respondent has not repaid the loan, he filed a suit in O.S.No.207 of 2005 and also obtained the judgment in his favour. Subsequently, he filed the Execution Petition to execute the judgment and decree. Hence, the petitioner, as a third party, moved the claim petition in E.A.No.338 of 2016 seeking to raise the attachment and dismiss the execution petition. On the side of the claim petitioner, he himself was examined as PW-1 and other two attesting witnesses have also been examined as Pws-2 & 3 and 6 documents were marked. On the side of the first respondent, he himself was examined as RW-1 and no documents were marked since R2 to R4 were remain ex-parte. The case of the first respondent is that the sale in favour of the revision petitioner is not the real sale. In order to deviate the claim of the first respondent/decreed holder, the petitioner filed the present revision before this Court. The respondents 2 to 4 colluded with the revision petitioner to set up him and registered the sale deed, which is not created upon. Though the petitioner has stated that even prior to purchase the property, he applied for the Encumbrance Certificate, he has not produced the same. The

respondents 2 to 4 borrowed amounts from several persons. All the persons obtained the decree against the respondents 2 to 4. In order to deviate the claims of the creditors, the respondents 2 to 4 created the false sale deed in favour of the revision petitioner and filed the claim petition as if the revision petitioner purchased the suit property and he is the owner of the said property. During enquiry, the first respondent, in his cross-examination, has stated that his sons were working in abroad and they sent money to him for purchasing the property, whereas he has not produced any document to prove the same. It seems that he has not proved his claim that he has purchased the property without notice, for valuable consideration and he is the owner of the property.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Though notices were duly served on the respondents, none appeared either in person or through their counsel.

6. It is the admitted fact that the property originally belongs to the respondents 2 to 4 and the first respondent herein filed the suit against the respondents 2 to 4 herein in O.S.No.207 of 2005 before the District Munsif Court, Vridhachalam. The said suit was decreed in favour of the first respondent herein and against the respondents 2 to 4. The first respondent filed an Execution Petition before the Principal District Munsif Court, FAC,

Vridhachalam in E.P.No.33 of 2010 in O.S.No.207 of 2005 for execution of decree. The revision petitioner herein, as a third party, filed a claim petition under Order 21 Rule 58 of CPC in E.A.No.338 of 2016 stating that he purchased the property from the respondents 2 to 4/judgment debtors under registered Sale deed on 17.09.2013 for valuable consideration of Rs.3,50,000/-. Subsequently, when he heard about the judgment in respect of the property, he applied for Encumbrance Certificate, in which, he found that his property was attached on 09.05.2016. Hence, the petitioner, as a third party, moved the claim petition in E.A.No.338 of 2016 seeking to raise the attachment and dismiss the execution petition.

7. On reading of the entire evidence adduced by both the parties, it is seen that the petitioner has stated that he has got sufficient means to purchase the suit property. At that time of purchasing the property, he was not aware of the dispute. On the other hand, the first respondent established that the respondents 2 to 4 set up the revision petitioner and created false documents to escape from the legal liability. The revision petitioner has clearly stated that out of the money sent by his sons, he purchased the suit property, whereas he has not produced any documents to prove the same. This Court is of the view that the revision petitioner failed to establish his claim before the learned District Munsif, Vridhachalam and there is no merit in this revision.

8. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

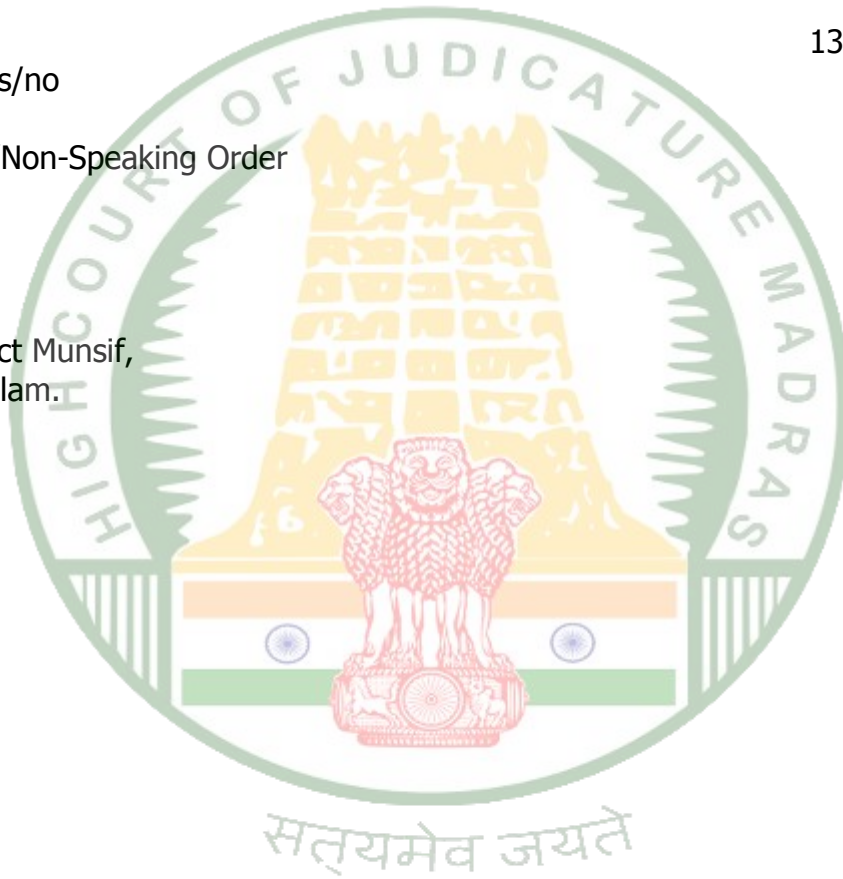
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Index: Yes/no

Speaking/Non-Speaking Order

KMI

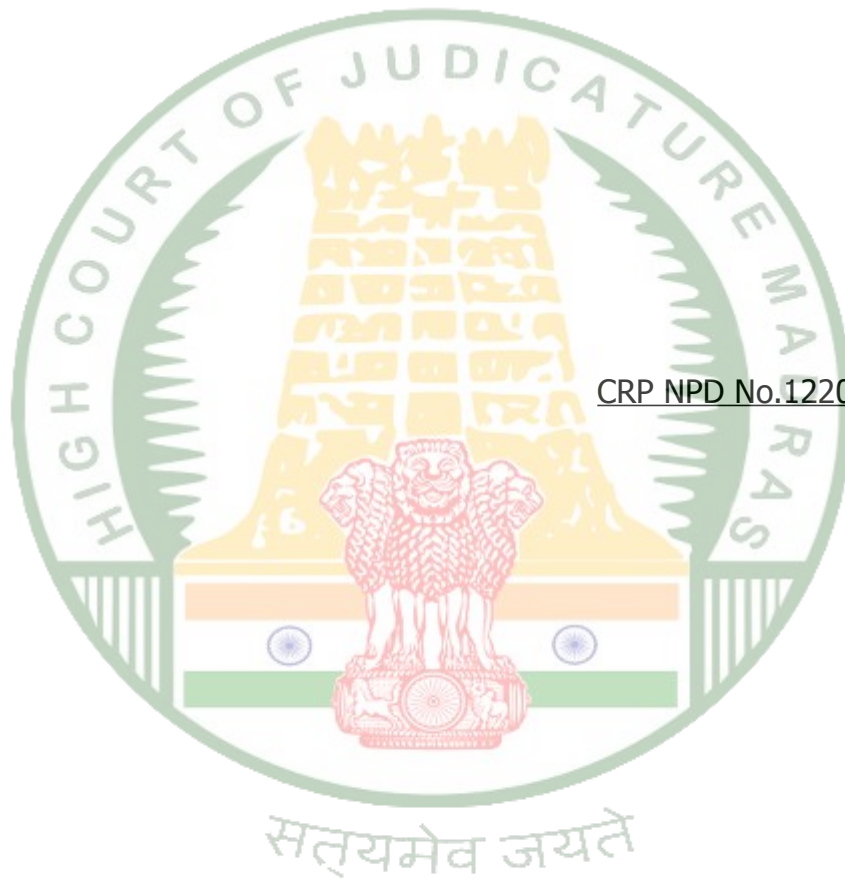
To
The District Munsif,
Vridhachalam.



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P.VELMURUGAN, J.

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