

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P.No.1614 of 2012
and M.P.No.1 of 2012

Balaji

... Petitioner

Vs.

1.Nagai Sivasakthi Benefit Fund Ltd.,
Nagapattinam,
rep by its Managing Partner K.Ravi
No.20, Neela South Street,
Nagapattinam Town.

2.Rajamani Ammal
3.V.K.Varadarajan
4.Sairaj
5.Venkatesan
6.Renuka @ Rajalakshmi
7.Sasikala

... Respondents

(Subce R3, R5 to R7 remained exparte in the Court below, notice dispensed with for them)

Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in P.O.P.No.16 of 2011 dated 05.01.2012 on the file of the District Judge, Nagapattinam.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.M.S.Palanisamy (R1)

Mr.Dev Narendran,
Government Advocate (CS)
- vide order dated 13.09.2019

ORDER

Challenging the order passed in P.O.P.No.16 of 2011 on the file of the District Court, Nagapattinam, the petitioner, who is the 5th defendant in the suit in O.S.No.113 of 2002 has filed the above Civil Revision Petition.

2.The suit was filed by the plaintiff on the basis of an equitable mortgage executed by the petitioner's father. The suit was decreed and as against the same, the revision petitioner filed an un-numbered appeal before the District Court, Nagapattinam. In the appeal, the petitioner filed a petition in P.O.P.No.16 of 2011 to declare him as an indigent person and to permit him to prosecute the appeal as *informa pauperis*. In the affidavit filed in support of the petition, the petitioner has stated that he is working as an acting driver and earning a meager amount of Rs.2,000/- per month. Further, he has stated that he does not own any movable or immovable property on his own and he has not sold any properties before three months time. Further, the petitioner has stated that he is not having sufficient means to pay the court fees of Rs.90,110/- to prosecute the appeal. The plaintiff filed the counter wherein it has been stated that the petitioner owns a Hero Honda motorcycle bearing Registration No.TN 51 B 5163, worth about Rs.40,000/-. Further, it has been stated that the respondents 2 to 7 are the legal representatives of Veeraraghavalu Naidu, who borrowed loan and created mortgage. Further, it

has been stated that the petitioner is entitled to 1/7th share in the property. The trial Court, taking into consideration the case of both parties, dismissed the petition finding that the petitioner has got sufficient means to pay the court fees. Challenging the same, the petitioner has filed the above Civil Revision Petition.

3.Since the matter is relating to the payment of court fees, notice was served on the learned Government Advocate (CS) and the learned Government Advocate also filed a report of the Tahsildar, Nagapattinam dated 17.10.2019 wherein he has stated that the petitioner is residing in a terraced house property along with his mother Tmt.Rajamani and the value of the property is about Rs.50 lakhs. Further, the Tahsildar has stated that the petitioner is owning a Tata Sumo vehicle and is doing Travels business.

4.Mr.A.Muthukumar, learned counsel appearing for the petitioner submitted that the property, which is referred to in the report of the Tahsildar, is the subject matter of the suit in O.S.No.113 of 2002. Further, the learned counsel submitted that the Tata Sumo car was purchased subsequent to the filing of the Pauper O.P.

5. When the petitioner has got means to purchase a car, he cannot be termed as a pauper. On a perusal of the Registration Certificate produced by the learned counsel for the petitioner, it is clear that even the hypothecation agreement endorsement made in the R.C. Book was cancelled on 06.12.2017. Therefore, there is no encumbrance on the vehicle as of today. In view of the report filed by the Tahsildar, Nagapattinam and also on perusing the Registration Certificate produced by the petitioner, I am of the considered view that the petitioner has got sufficient means to pay the court fees and the Lower Appellate Court has rightly dismissed the petition. I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is dismissed. The petitioner is directed to pay the court fees within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

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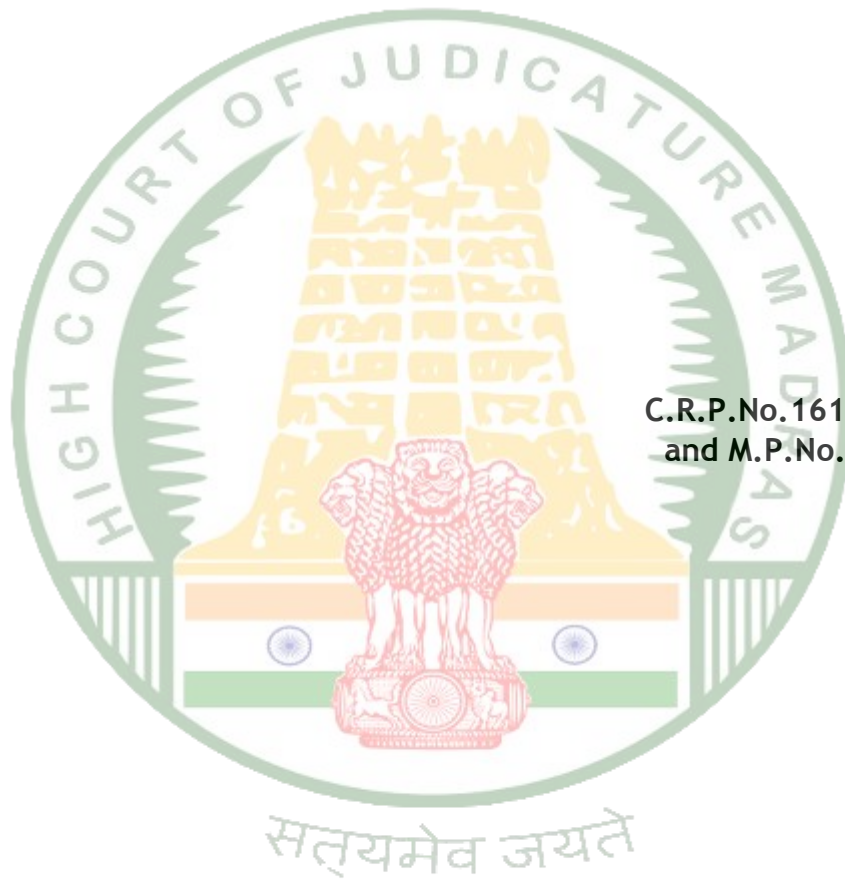
To

The District Judge, Nagapattinam.

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M. DURAISWAMY,J.

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