

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD).No.3370 of 2012

Muthayammal

....Petitioner

vs.

1.A.Muthusamy
2.Thulasimani
3.Loganayagi
4.Indirani
5.Sivamani
6.Navaneedam

....Respondents

(RR4 to R6 brought on record as Legal heirs of the deceased R2 viz.,
Thulasimani vide Court order dated 10.07.2019 made in MP.No.1 of 2013 in
CRP.(NPD) 3370 of 2012.

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil
Procedure to set-aside the fair and decretal Order dated 22.06.2012 made
in E.A.No.6 of 2012 in E.P.No.83 of 2009 in O.S.No.14 of 2004 on the file of
the Second Additional District Court, Erode.

For Petitioner : Mr.Manokaran

For R1 : Mr.I.C.Vasudevan

For R3 to R6 : No appearance

ORDER

The Civil Revision petition has been filed against the orders passed by the learned Second Additional District Judge, Erode in E.A.No.6 of 2012 in E.P.No.83 of 2009 in O.S.No.14 of 2004. The learned Second Additional District Judge, Erode had fixed the upset price of the first item of the property as 35 lakhs and the second item of the property as 6 lakhs. It is seen from the records that the upset price was originally fixed at 40 lakhs for first item and 7 Lakhs for second item. Since the properties could not be sold, the decree holder filed E.A.6 of 2012 to reduce the upset price. Accordingly, the upset price was reduced to 35 lakhs and 7 lakhs for the items 1 and 2 respectively. Aggrieved over the same, Judgment debtors have filed the present Civil Revision Petition.

2. The learned counsel appearing for the appellant contended that the learned Second Additional District Judge, Erode without considering the various points raised by the present Civil Revision Petitioner, in his counter had passed an order reducing the upset price for the properties. He also relied on the decision in *S.Mariappa (dead) by LRs Vs. Siddappa and*

another reported in (2005) 10 Supreme Court Cases 235 and contended that a Court should examine, before selling all the properties indicated in the execution petition, the aspect whether the properties should be sold or sale of a portion of the property would be sufficient to satisfy the decree.

3.It is pertinent to point out in the said judgment, in ***S.Mariappa (dead) by LRs Vs. Siddappa and another cited supra*** decree amount was Rs.8000/- and the Judgment debtors property measuring 10 acres of land was brought for sale and the same was purchased for a sum of Rs.17000/-. In such circumstances, the Hon'ble Supreme Court held that a single property could have been sold in the first instance for the realization of the decreetal amount.

4.In the instant case the decreetal amount is 23 lakhs and a Perusal of the records shows that the upset price of the first and second items of the property were fixed at 35 lakhs and 7 lakhs respectively. In the circumstances, selling of both the properties at the same time may be necessary for the realization of the decreetal amount. Therefore, the orders passed by the second Additional District Judge, Erode does not warrant any

interference by this Court.

R.HEMALATHA, J.

vsn

5.The learned counsel appearing for the Civil Revision Petitioner contended that since the upset price was fixed in the year 2012 and we are in 2019, the value of the property would have increased multifold. The executing Court is directed to keep this in mind before proceeding further. The Execution Court is also directed to dispose of the Execution Petition within a period of six months from the date of receipt of a copy of this order.

6.Accordingly, this Civil Revision Petition stands dismissed.

31.07.2019

vsn

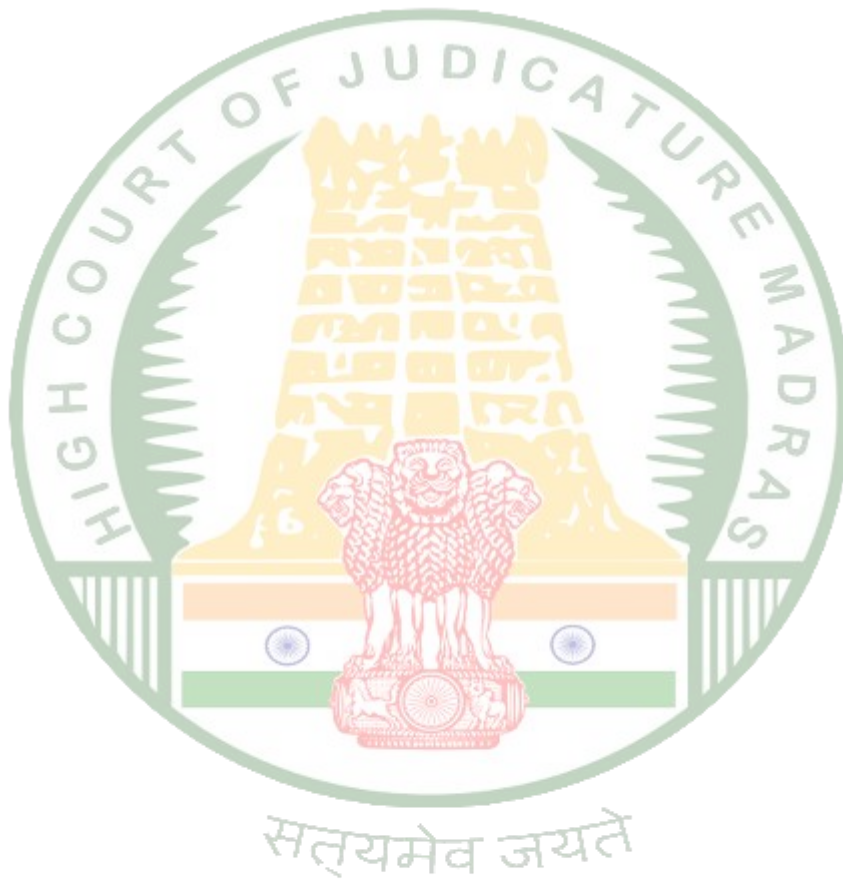
Index : Yes/No

Speaking/Non-speaking order

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To

The Second Additional District Court,
Erode.



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