

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3874 of 2013 and
M.P.No.1 of 2013

1. Kuppan

2. Chinna Pappa

3. Kanthammal

4. Malar

(Petitioners 2 to 4 brought on record as LRs
of the deceased sole petitioner vide order of
Court dated 23.12.2016 made in CMP
Nos. 16752 to 16757/2016 in CRP No.3874/2013)

... Petitioners

1. Samban

2. Lingam

3. Pushpa

4. Rajeswari

5. Gnanam

6. Chitra

7. Kumar

(Respondents 2 to 4 brought on record as LRs
of the deceased sole respondent vide order of
Court dated 23.12.2016 made in CMP
Nos. 16752 to 16757/2016 in CRP No.3874/2013)

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 31.07.2013 made in C.M.A.No.6 of 2011 on the file of the learned Subordinate Judge, Tiruppattur, Vellore District, confirming the fair and decretal order dated 06.09.2010 in E.A.No.187/2004 in E.P.No.94/2003 (O.S.No.112/2012) on the file of the Tiruppattur District Musnif Court, Tiruppattur.

For Petitioners : Mr. M.V. Venkateshan

For Respondents : Mr. P.A. Sudesh Kumar

ORDER

Challenging the Judgment and Decree passed in C.M.A.No.6 of 2011 on the file of the Subordinate Court, Tiruppattur, Vellore District, confirming the order passed in E.A.No.187 of 2004 in E.P.No.94 of 2003 in O.S.No.112 of 2012 on the file of the Tiruppattur District Musnif Court, Tiruppattur, the Judgment Debtor has filed the above Civil Revision Petition.

2. The respondent-plaintiff filed the suit in O.S.No.112 of 2012 for declaration, permanent injunction and for mandatory injunction. The suit was decreed on 27.03.2003.

3.1 Pursuant to the decree passed in O.S.No.112 of 2012, the respondent filed an Execution Petition in R.E.P.No.94 of 2003. In the said Execution Petition, the Judgment Debtor-defendant filed an application in R.E.A.No.187 of 2004 under Order XXI Rule 97 of Civil Procedure Code contending that the Decree Holder has no right or title over the suit property.

3.2 In the affidavit filed in support of the application, the Judgment Debtor has stated that he is in possession and enjoyment of the property for several decades. Further, he has stated that he could not produce the necessary documents before the Trial Court and that he has produced only the xerox copies and an opportunity should be given to him to produce the certified copies of the documents.

3.3 The application filed by the Judgment Debtor was opposed by the Decree Holder stating that the Trial Court has rightly decreed the

suit and that the Judgment Debtor filed an application to set aside the ex parte decree passed in I.A.No. 243 of 2004 and the Trial Court also dismissed the application.

4. Having failed in the application to set aside the ex parte decree, the Judgment Debtor has come forward to file the present application under Order XXI Rule 97 of Civil Procedure Code.

5. It is pertinent to note that an Advocate Commissioner was appointed in the execution proceedings and the Advocate Commissioner also given his findings in support of the Decree Holder's claim.

6. Considering the materials available on record and the Commissioner's report and also the documents produced by the either party, the Executing Court dismissed the application. Further, while dismissing the application, the Executing Court found that the Judgment Debtor failed to establish his case by adducing acceptable evidence. In the absence of any acceptable evidence, produced by the Judgment Debtor, the Executing court has dismissed the application.

7. Aggrieved over the same, the Judgment Debtor, preferred an appeal in C.M.A.No.6 of 2011 and the Lower Appellate court also confirmed the order of the Executing Court.

8. As against the concurrent findings of the courts below, the Judgment Debtor has filed the above Civil Revision Petition.

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on record, it could be seen that the petitioner-Judgment Debtor has not produced any acceptable evidence to interfere with the decree passed in O.S.No.112 of 2012. In the absence of any acceptable evidence let in by the Judgment Debtor, the courts below have rightly dismissed the application. The documents produced by the Judgment debtor, viz., patta pass book, property tax receipt and the electricity consumption receipt, shall not support the case of the defendant in any manner. In these circumstances, the courts below have rightly dismissed the application filed by the Judgment Debtor.

10. I do not find any error or irregularity in the order passed by the courts below. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

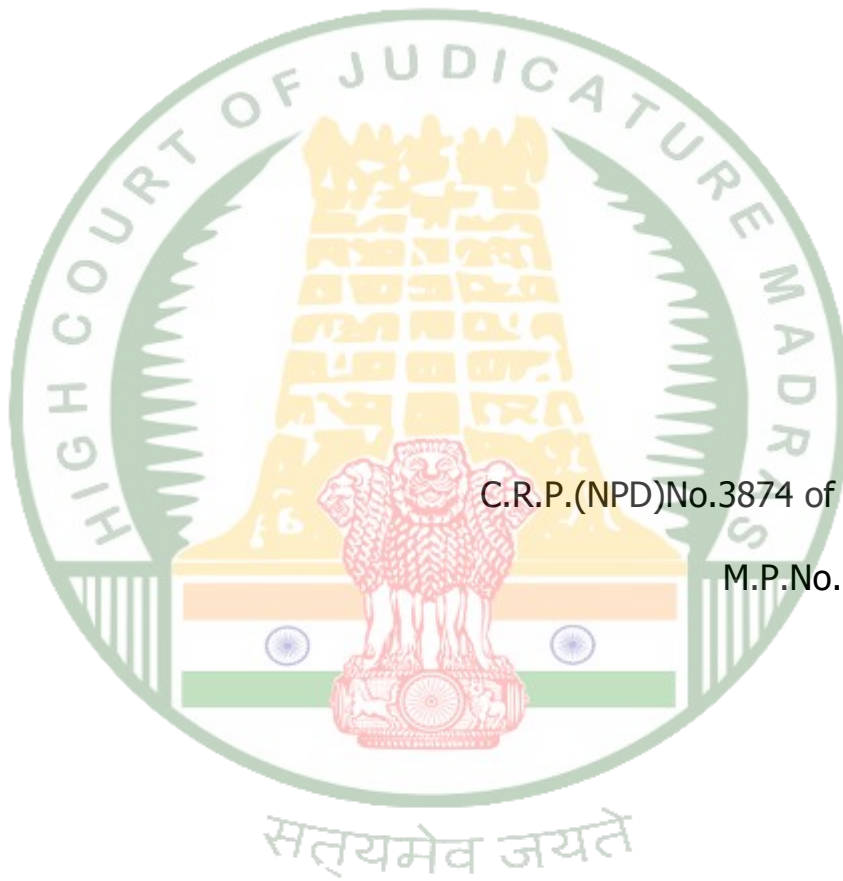
1. The Subordinate Judge
Tiruppattur, Vellore District, c
2. The District Musnif Court,
Tiruppattur.

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M.DURAI SWAMY, J.

Rj



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