

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.4051 of 2013 and
M.P.No.1 of 2013

1. Smt. V. Jayasree @ Baby
2. V. Karthick
3. G. Janakiammal

... Petitioners

v.

1. Jeyanthi
2. Rajkumar Chit Funds (PT) Ltd.,
Rep. By its Managing Director,
A.M. Vaiapuri Chettiar,
No.25, Venkataramana Road,
R.S. Puram, Coimbatore

3. C.R. Jagannathan & Bros.,
122/1, Avarampalayam Road,
Peelamedu, Coimbatore.

4. Mrs. Vijayalakshmi

5. Vasanthakrishnan

6. Nirmala

7. Prabhavathi

8. Thulasiammal

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and Ex. Order dated 02.03.2013 passed in E.A.No.668 of 2002 in E.P.No.126 of 1988 in O.S.No.1256 of 1979 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.V.Venkatasamy

For Respondents : AR.L.Sunderasan, Senior Counsel – R1
for Ms.AL.Gandhimathi

No Appearance – R2, R4 & R5

Given up – R3 and R6 to R8
(vide order dated 23.9.2019)

ORDER

Challenging the fair and final order passed in E.A.No.668 of 2002 in E.P.No.126 of 1988 in O.S.No.1256 of 1979 on the file of the II Additional Subordinate Court, Coimbatore, the legal heirs of the auction purchaser have filed the above Civil Revision Petition.

2. The 2nd respondent-plaintiff filed the suit in O.S.No.1256 of 1979 for recovery of money. The suit was decreed on 12.02.1980.

3.Pursuant to the decree passed by the Trial Court, the 2nd respondent filed an Execution Petition in E.P.No.126 of 1988 to bring the property belonging to the Judgment Debtor for sale. The property was sold in the auction held on 23.10.1991 and a sale certificate was also issued in favour of the auction purchaser on 06.01.1992. Thereafter, in the year 2002, to be precise, on 04.07.2002, the 1st respondent, who is the daughter of the Judgment Debtor, viz., the 3rd defendant-P.R.Palaniswami, filed an application in E.A.No.668 of 2002 under section 47 of the Civil Procedure Code to declare the court auction held on 23.10.1991 with regard to the property purchased by the auction purchaser as null and void.

4. It cannot be disputed that the 1st respondent has filed the application in E.A.No.668 of 2002 to set aside the sale held on 23.10.1991 after a lapse of 10 years. It is also pertinent to note that when a specific provision is available to the 1st respondent to set aside the sale held on 23.10.1991, under Order XXI Rule 90 of Civil Procedure Code, the 1st respondent choose to file the application to set aside the

sale under section 47 of the Civil Procedure Code.

5. The Hon'ble Supreme Court, in the Judgment reported in **1994(1) L.W.49 [Desh Bandhu Gupta v. N.L.Anand & Rajinder Singh]** held that under section 47 of the Civil Procedure Code, all questions relating to execution, discharge or satisfaction of the decree should be determined by the Executing Court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under section 47 and post-sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered under Order XXI Rule 90 of the Civil Procedure Code. It is also relevant to extract para 15 of the judgment, which reads as follows:-

" ... 15. Under Section 47 all questions relating to execution, discharge or satisfaction of the decree should be determined by the Executing Court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under Section 47. Post-sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered under Order 21 Rule 90. Sub-rule (1) thereof covers the field of material irregularities or fraud in publicity or conducting the sale. Sub-rule (2) enjoins proof thereof

and the court should find that by reason thereof the applicant sustained substantial injury. The total absence of drawing up of the proclamation of sale and settlement of its term by judicial application of mind renders the sale a nullity being void. It is covered by Section 47. The non- application of mind whether sale of a part of the property would satisfy the decree debt is a material irregularity doing substantial injury to the appellant attracting Order 21 Rule 90. In either case the sale is liable to be set aside. It is true that there is distinction between mere irregularity and material irregularities and the sale is not liable to be set aside on proof of mere irregularity. It must be material irregularity and the court must be satisfied that on account thereof substantial injury was sustained by the appellant. The sale of 550 sq. yards for recovery of a paltry sum of Rs 7,780.33, without selling a portion thereof, caused substantial injury to the appellant.

6. The ratio laid down by the Hon'ble Supreme court in the above referred Judgment, squarely applies to the present case.

7. The 1st respondent has filed the application to set aside the sale after a lapse of 10 years under Section 47 of the Civil Procedure

Code and in view of the above referred Judgment, the same is not maintainable. Therefore, I am of the view that the application filed by the 1st respondent to set aside the sale is not maintainable and the Executing Court should have dismissed the application. The Executing Court, without going into the maintainability of the application, erroneously, allowed the application and set aside the sale held on 23.10.1991.

8. Following the ratio laid down in the Judgment reported in **1994(1) L.W.49 [cited supra]**, the fair and decretal order passed in E.A.No.668 of 2002 in E.P.No.126 of 1988 in O.S.No.1256 of 1979 are liable to be set aside. Accordingly, the same are set aside and the application in E.A.No.668 of 2002 stands dismissed. The Civil Revision Petition is Allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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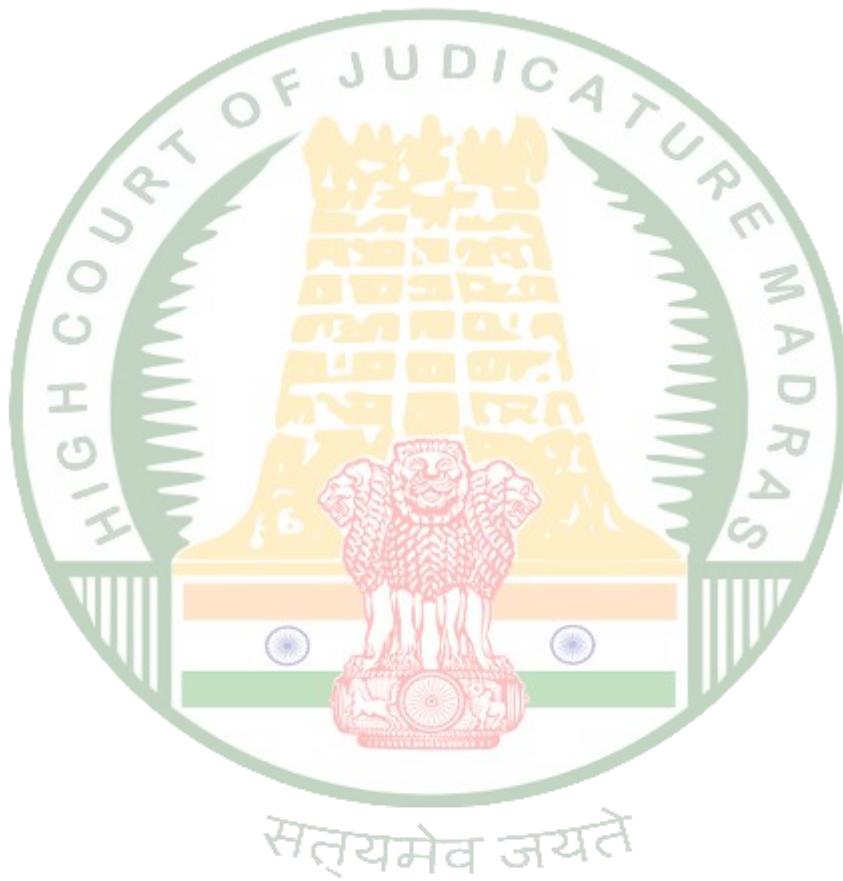
Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The II Additional Subordinate Judge,
Coimbatore.

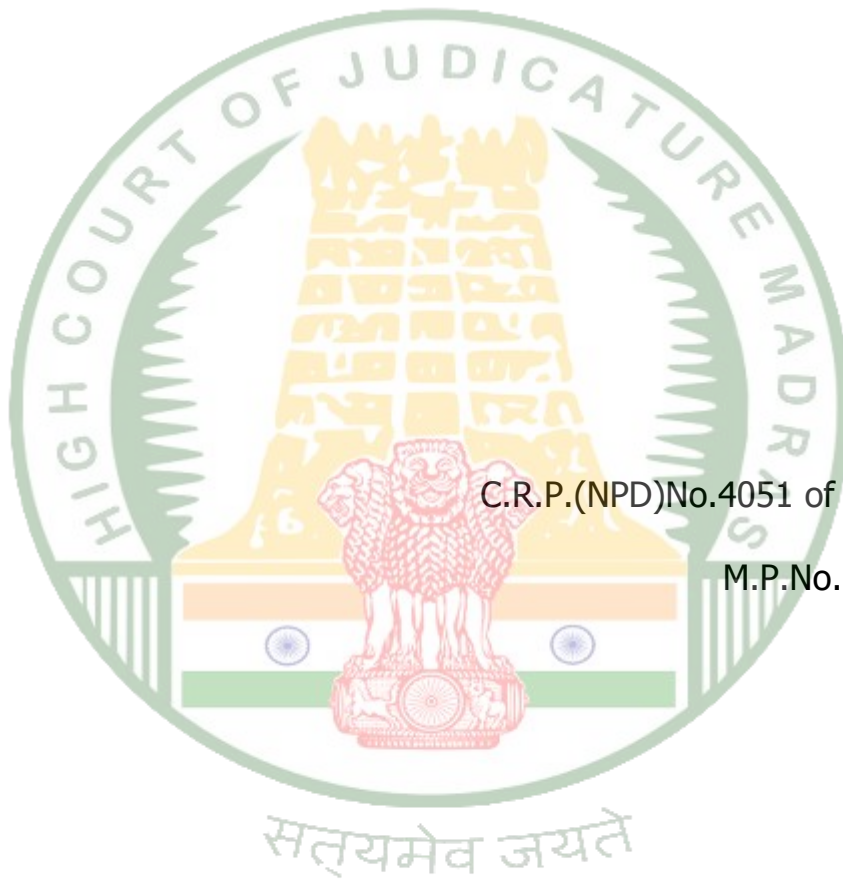


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M.DURAISWAMY, J.

Rj



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