

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP(NPD).No.1957 of 2016

and

C.M.P.Nos.10324 of 2016 & 8665 of 2018

M.Devaraj

...Revision Petitioner/3rd Party Claimant

Vs.

1. The Tamil Nadu Tea Plantations Corporation Ltd.,
Represented by its Managing Director,
Government Register Office,
Essex Lodge,
Orange Cross Road,
Coonoor,
The Nilagiris District.

...Respondent/Decree Holder

2. M.Ramakrishnan

...Respondent/Judgment Debtor

This Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decretal order passed by the Learned Subordinate Court, Udagamandalam dated 01.03.2016 made in E.A.No.193 of 2015 in E.P.No.11 of 2013 in O.S.No.186 of 1998. The petition filed by the petitioner as a third party claimant under Order XXI Rule 58 of the CPC and allow the claim petition filed by the revision petitioner.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.Arun Anbumani for R1
No Appearance for R2

ORDER

This Civil Revision Petition is filed challenging the order passed by the Learned Subordinate Judge, Nilgiris in a claim petition filed by the Revision Petitioner-3rd party stating that the property which is now sought to be sold belongs to him, since it is a joint family property and only an undivided half share belongs to the 2nd respondent-Judgment Debtor.

2. In support of the said contention, the Revision Petitioner had produced a lease deed dated 16.05.2013, which was marked as Exhibit P6. A reading of which, would show that the property in question is a joint property of both the Revision Petitioner as well as his brother named M.Ramakrishnan, who is the Judgment Debtor-2nd respondent herein.

3. The learned Judge has proceeded to dismiss the claim petition by stating that it is only the undivided half share which would be sold and not the entire property and that it is open to the Revision Petitioner to participate in the auction and purchase property. Even assuming that the 3rd party purchases the property, it is open to the 3rd party to file necessary suit for partition of the undivided half share belonging to the Judgment Debtor-2nd respondent.

4. This order is a subject matter of challenge here.

5. Mr. Arun Anbumani, learned counsel appearing for the 1st respondent-Decree Holder, who contended that the lease deed which is being marked as Exhibit-P5 has been created for the purpose of ensuring that the property is removed out of the reach of the creditors. He has filed the earlier lease deed which was entered into with the very same tenant as shown in Exhibit-P5. A reading of the lease deed would show that there was an oral partition between the parties and separate mutation of Revenue records have also taken place in the name of both the brothers. The Lease Deed is the very same Lease Deed which is being referred to in the Exhibit-P5.

6. Another interesting factor that has to be considered is the reason that is being given for in the cancellation of the lease deed dated 25.03.2013 in the cancellation/surrender deed dated 10.05.2013. The tenant-High Land Coffee, Spices and Tea Private Limited, has stated that they surrendered possession, since they were unable to run the business. Within six days thereafter, Exhibit-P5 comes into existence and the tenant is the very same person who has surrendered possession stating that he is unable to run the business. In view of these documents which indicate an attempt to remove the property from the reach of the creditor, I am

remitting the matter back to the Executing Court to decide as to whether the parties have partitioned their properties and in the partition whether this property is the exclusive property of the claimant/Revision Petitioner and even assuming that if the property has not been partitioned between the brothers, the Decree Holder can still execute the Decree against the undivided half share.

7. It is made clear that the attachment order already granted will continue till the disposal of the E.A Proceedings. The Executing Court shall dispose of the E.A.No.193 of 2015 in E.P.No.11 of 2013 within a period of two months on or before 30.06.2019. It is open to both parties to submit such document, as are required. Needless to state that the documents are subject to proof and relevance.

8. In the result, the Civil Revision Petition is disposed of, with the above directions. No costs. Consequently, connected miscellaneous petitions are also closed.

18.03.2019

Speaking order / Non-speaking order
Index: Yes/No
Internet: Yes/No

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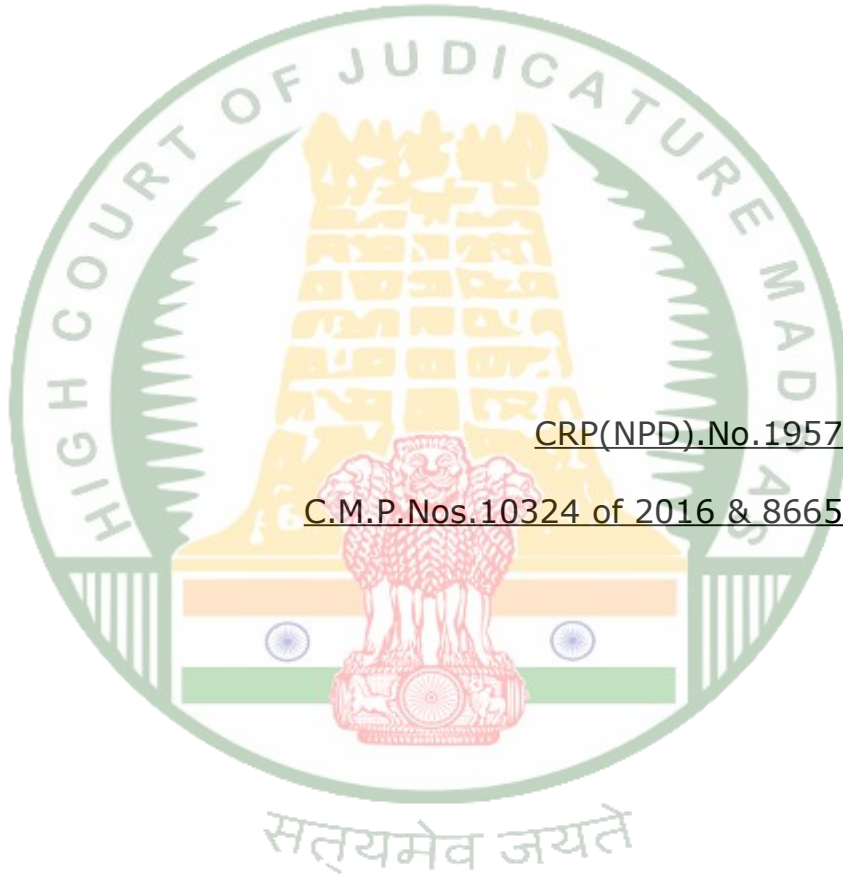
To

1. The Tamil Nadu Tea Plantations Corporation Ltd.,
Represented by its Managing Director,
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Essex Lodge,
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Coonoor,
The Nilagiris District.
2. The Learned Subordinate Court,
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