

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(NPD).No.272 of 2016

Kulandayee

Petitioner

Vs

1. T.Santha

2. Marimuthu

3. Pachiammal

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 30.11.2015 made in E.A.No.161 of 2015 in E.A.No.127 of 2015 in E.P.No.45 of 2014 in I.A.No.408 of 2011 in O.S.No.36 of 2009 on the file of Principal District Munsif Court, Bhavani.

For Petitioner : Mr.R.Vinoth Raja

For Respondents : R1 & R2 – Not ready

R3 – No appearance

ORDER

The above Civil Revision Petition brings yet another illustration how Execution Proceedings are misused by the Judgment debtors to keep away the decree holders from enjoying the fruits of decree.

2. The Revision petitioner as the decree holder had obtained a Final Decree as early as on 11.12.2013 in OS No.36 of 2009 on the file of Principal District Munsif. Thereafter, since delivery was not effected, the decree holder had filed execution proceedings in EP No.45 of 2014 for delivery.

3. For respondents 1 and 2, summons have been affixed on the door, since they were not available, when notice was attempted to be served on them and notice has been served to the 3rd respondent. Notice is therefore deemed to be completed.

4. The 3rd defendant/3rd Judgment debtor who had remained exparte, thereafter, took out an application in EA No.112 of 2015 to set aside the exparte order passed in EP No.45 of 2014 dated 18.04.2015 and EA No. 127 of 2015 for condoning the delay of 130 days in filing the application to set aside the exparte order.

5. Thereafter, the 3rd Judgment debtor came forward with the petition, which is impinged in the present Civil Revision Petition namely EA No. 161 of 2015. In this application, the 3rd Judgment debtor sought to make an amendment to the affidavit filed in support of EA No. 127 of 2015, by substituting the place of treatment from Kerala to Bhavani. This application has been allowed by the learned Judge mechanically.

6. The learned Judge has not taken into account the fact that the Revision Petitioner having obtained an ex parte decree, ordered for delivery on 18.04.2015 is unable to take possession of the property, in view of these applications being filed by the Judgment debtor. The only endeavor is to protract and prolong the revision petitioner/decreed holders from taking possession of the property that is now allotted to them. The Order passed by the learned Judge suffers from a non-application of mind and deserves to be set aside.

7. In view of the above discussions, this Civil Revision Petition is allowed. No costs.

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To

1. Principal District Munsif Court, Bhavani.

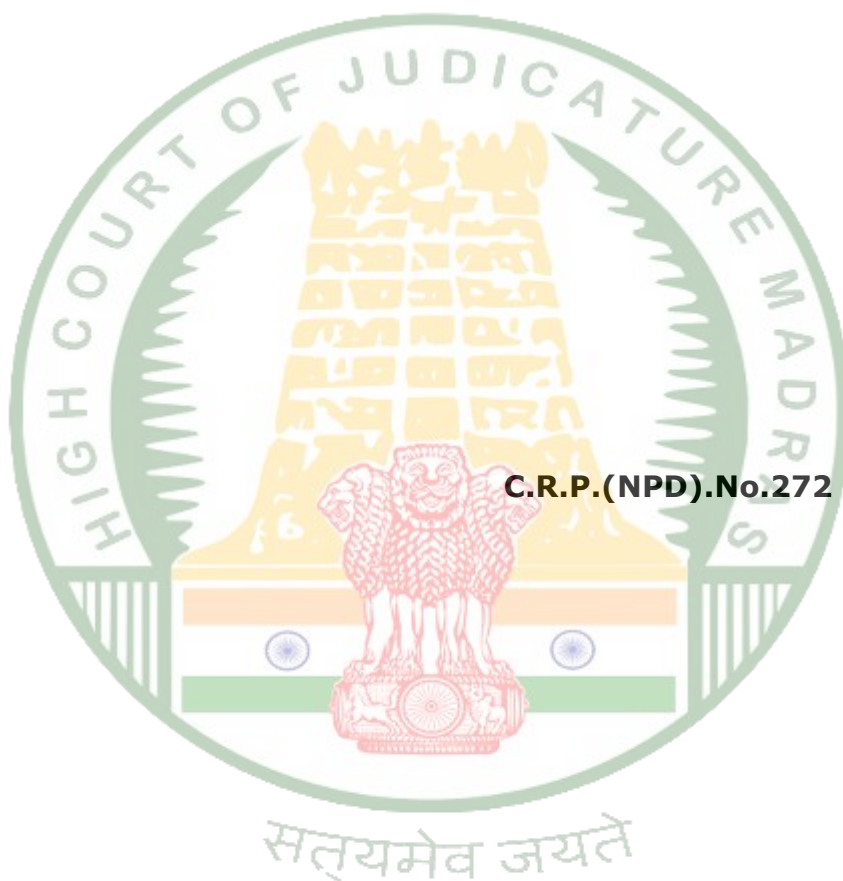
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P.T.ASHA, J

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