

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.397 of 2016

&

C.M.P.Nos.2146 & 5923 of 2016

1.Narayanasamy

2.Govindasamy

3.Venkatesan

...Petitioners

Vs

1.Narasingam

2.Kanagasabai

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the against the fair and decreetal order passed in E.A.No.125 of 2014 in E.A.No.775 of 2010 in E.P.No.91 of 2004 in O.S.No.75 of 2003 dated 17.04.2015 on the file of the Principal District Munsif Court, Ulundurpettai.

For Petitioners : Mr.N.Naganathan

For Respondent 1 : No Appearance

For Respondent 2 : Mr.T.Gandhi

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Ulundurpettai in E.A.No.125 of 2014 in E.P.No.775 of 2010 in O.S.No.75 of 2003, in and by which the Section 47 application filed by the Civil Revision Petitioner who was the third party to the suit has been dismissed. From the records, it appears that the 2nd respondent in the present Civil Revision Petition had filed a suit against the 1st respondent who is the brother of the revision petitioner herein for recovery of money and the same had been decreed in his favour on 29.01.2004.

2. Thereafter, he has brought the property of the 2nd respondent to sale and the same was sold in auction in which the decree holder was the successful bidder and the sale deed had also been confirmed. It is also seen that the revision petitioner had earlier filed an application under Order XXI Rule 58 in

E.A.No.439 of 2006 and they had allowed the application to be dismissed for default against which no appeal have been filed. The petitioner thereafter filed the present E.A. under the provisions of Section 47 of the Code of Civil Procedure. It is also seen that the revision petitioner had also filed O.S.No.326 of 2010 for a partition and for declaring the auction sale in favour of the 2nd respondent as null and void.

3.The Court below has dismissed the Section 47 application on the ground that the earlier application in E.A.No.439 of 2006 had been dismissed and it is also been admitted by the revision petitioner that there has been a multiple petitions and the property that has been attached is not the entire ancestral property. The Court has also held that there is no necessity to cancel the auction sale.

4.Challenging the same the revision petitioner is before this Court. A perusal of the papers, particularly the evidence of P.W.1, it is clear that there was an earlier attempt by the petitioners to stop the sale by filing the Order XXI Rule 58

application. The main fulcrum of the argument of the revision petitioner is that the subject matter of the execution proceedings are the joint family undivided properties. However, it is very clear that the parties have already partitioned their property and it is only one portion that is sought to be attached. I find no infirmity in the order of the Court below.

The civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

08.03.2019

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Index : Yes/No
Speaking order/non-speaking order

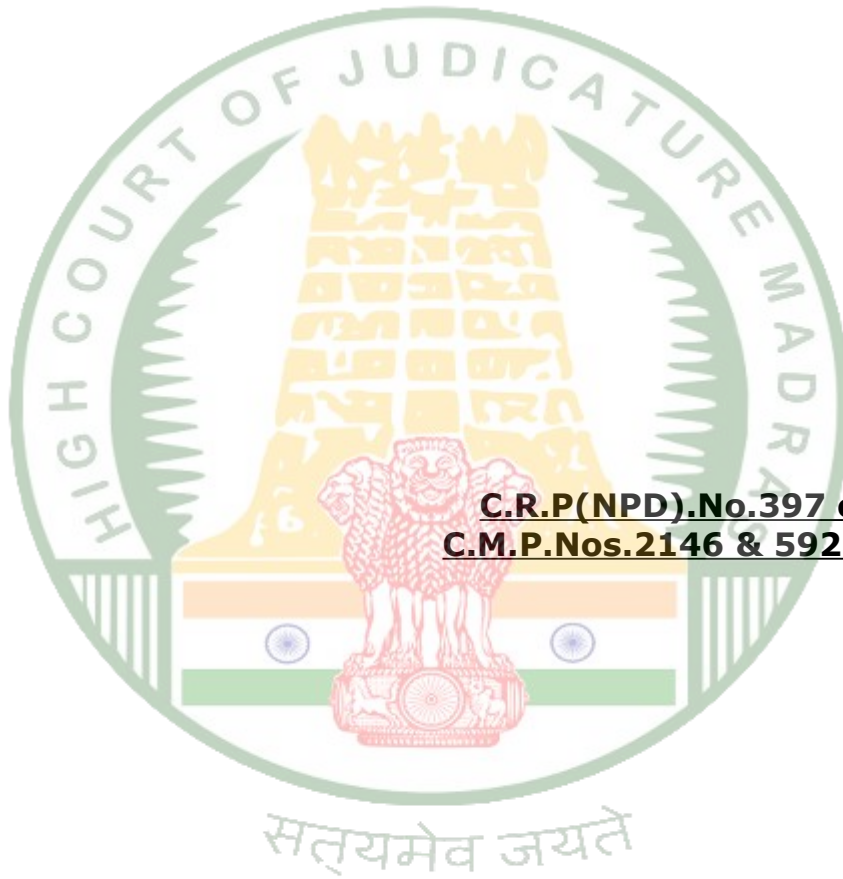
To,

The Principal District Munsif,
Ulundurpettai.

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P.T.ASHA, J.,

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