

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.483 of 2016

K.Muthusamy

...Petitioner

Vs

A.Murugesan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order and decretal order passed in REP No.185 of 2008 in O.S.No.770 of 2004 on the file of the Additional District Munsif Court, Namakkal, dated 31.01.2014.

For Petitioner : Mr.C.Jagadish

For Respondent : Mr.Swarnam J.Rajagopal

ORDER

The above Civil Revision Petition is filed challenging the order passed in REP. No.185 of 2008 in O.S.No.770 of 2004.

2. The facts that have culminated in filing of the above Civil Revision Petition is herein below narrated:

(i) The respondent/decree holder/plaintiff filed a suit before the learned Additional District Munsif, Madurai in O.S.No.770 of 2004 for a recovery of a sum of Rs.1,00,000/- (Rupees One Lakh only) which was said to have been paid by him towards advance for the lease in respect of the suit property. The property in question is situated in Namakkal and the revision petitioner/defendant is also residing at Namakkal which is outside the territorial Jurisdiction of this Court.

(ii) Be that as it may, the revision petitioner/defendant who had entered appearance on 17.11.2008 did not choose to contest the suit. Ultimately, an ex-parte decree came to be passed in favour of the respondent/decree holder/plaintiff on 31.03.2006. The decree was sought to be executed by the decree holder in REP. No.185 of 2008 on the file of the learned Additional District Munsif, Namakkal after obtaining the necessary transmit orders.

(iii) When the summons in the execution proceedings have been received by the defendant, he had woken by the fact that the ex-parte decree had been passed. Then, he filed an application in I.A.No.1120 of 2008 for setting aside the ex-parte decree with delay

and it was dismissed and the same was not challenged by the revision petitioner/defendant by filing a Civil Revision Petition before this Court.

(iv) Thereafter, the revision petitioner/defendant has taken out a counter stating that the Court which has passed the decree did not have territorial jurisdiction, as, neither was the defendant residing within the territorial jurisdiction of the Court nor was the subject matter within the territorial jurisdiction of the Court and further, no cause of action had arisen within the jurisdiction of the said Court.

(v) The Executing Court below rejected the contentions of the revision petitioner/defendant and stated that the executing Court cannot go beyond the decree and allowed the Execution petition. The said order is the subject matter of challenge before this Court.

3. Heard Mr.C.Jagadish, learned counsel appearing for the revision petitioner. He challenged the said order stating that no part of the cause of action occurred within the jurisdiction of the Courts at Madurai and he had also produced the lease agreement. Though, nowhere in the lease agreement, it is stated as to the place where the

lease agreement was executed, the scribe is shown of being at Namakkal. However, two witnesses who signed the lease are at Madurai. Therefore, there is no conclusive evidence to question the jurisdiction of the Madurai Court. The learned Counsel would rely on the Judgment reported in the case of **Balvant N. Viswamitra and others. vs. Yadav Sadashiv Mule (Dead) through Lrs.** reported in (2004) 8 SCC 706 with particular reference to Paragraph no. 9 where the Hon'ble Supreme Court has held that where a Court lacks inherent jurisdiction in passing a decree, such a decree would be *not est* and void *ab initio*, since the defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the Court passing the decree.

4. Per contra, Mr.Swarnam J.Rajagopal, who had entered appearance on behalf of the respondent/decreed holder/plaintiff would argue that the Court at Madurai had been conferred with jurisdiction on account of the fact that the lease agreement was signed at Madurai though, the property was situated outside the jurisdiction of the Madurai and the revision petitioner/defendant was also outside the jurisdiction of the Courts at Madurai. He has produced a Judgment of the Hon'ble Supreme Court in the case of **Vasudev Dhanjibhai Modi vs.**

Rajabhai Abdul Rehman and ors. reported in AIR 1970 SC 1475 which is a three member Judgment as against the two member Judgment produced on the side of the revision petitioner/defendant. In the Judgment cited by the respondent, the Hon'ble Supreme Court has stated as follows in paragraph nos. 8 and 9:

"8....

If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.

9. The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the

decision of which the question depends, and the objection does not appear on the fact of the record, the executing Court cannot enter upon and enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our Judgment, cannot be sustained."

5. This Court is bound by the Judgment passed by the larger bench. Further, the revision petitioner has not participated in the suit and allowed an ex-parte decree to be passed and has not challenged the dismissal of the condone delay petition. Further, the lease agreement gives rise to a presumption that it could have been executed at Madurai whereby conferring jurisdiction on the Courts at Madurai. Hence, I find no infirmity in the order passed in REP No.185 of 2008 in O.S.No.770 of 2004 on the file of the Additional District Munsif Court, Namakkal, dated 31.01.2014 and is therefore confirmed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

22.03.2019

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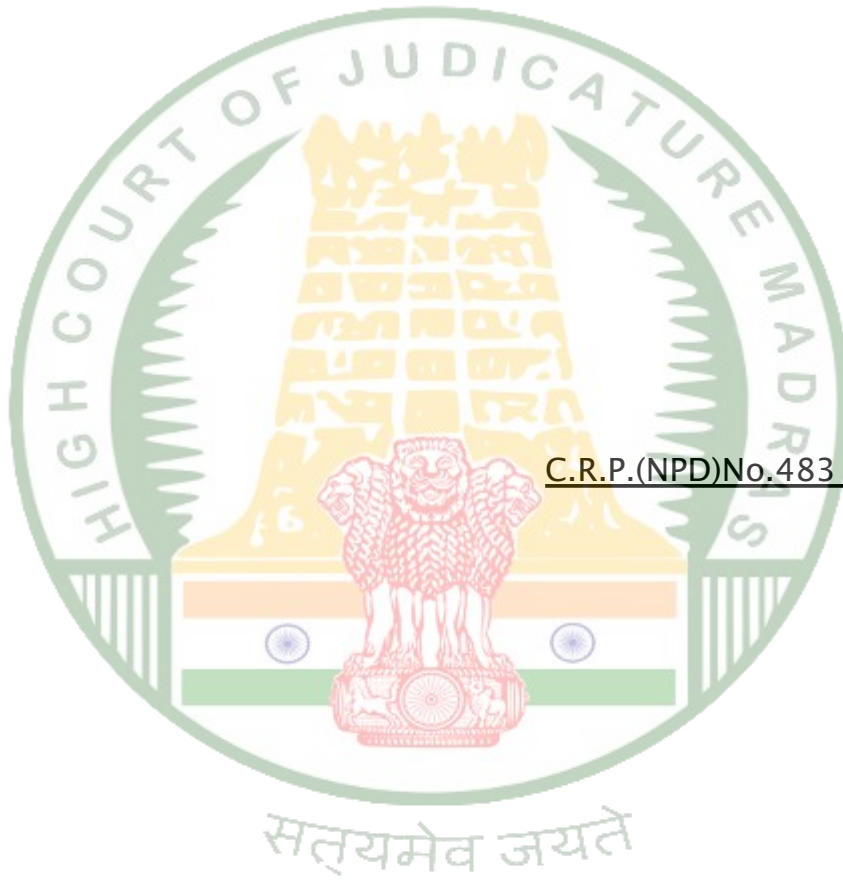
The Additional District Munsif Court,
Namakkal.



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P.T.ASHA,J.

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