

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.3800 of 2018
&
C.M.P.No.21165 of 2018

1.P.Radha

2.P.Chandrasekaran

3.P.Elangovan

4.P.Ravichandran

5.P.Baskaran

6.P.Parimala

7.P.Nirmala

...Petitioners

Vs

Arulmighu. Kadumbadiamman
Chinnamman Thirukoil
Rep. by its Hereditary Managing Trustee
Tmt.C.Anysuya
Saidapet West,
Chennai-600 015.

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of

Civil Procedure against the fair and decretal order dated 16.08.2018 in E.P.No.4074 of 2018 in O.S.No.5853 of 2003 on the file of the X Assistant City Civil Court, Chennai.

For Petitioners : Mr.R.Hariharan

For Respondent : Mr.L.Dhamodaran

ORDER

The revision petitioner is the Judgement debtor. The revision petition has been filed challenging the order of the X Assistant Judge, City Civil Court, Chennai in E.P.No.4074 of 2014 whereby the learned X Assistant Judge, City Civil Court, Chennai has directed the respondent to deliver the possession of the property by 09.10.2018. The following are the brief facts necessary for disposal of the Civil Revision Petition.

2.The decree holder/respondent had filed a suit O.S.No.5853 of 2003 on the file of the XII Assistant Judge, City

Civil Court, Chennai for recovery of possession and for mesne profits. It is the case of the respondent that the defendant/revision petitioner has been their tenant and has been in default in the payment of rents from January 1984. That apart the Judgement debtor was attempting to put up construction and therefore the plaintiff temple had issued a legal notice dated 11.11.2002, calling upon the Judgement Debtor to stop the construction. Since there was no response from the Judgement debtor, another notice dated 02.05.2003 was issued calling upon the Judgement debtor to surrender vacant possession of the land within three months from the date of receipt of the notice. Since the defendant/Judgement debtor had not complied with the said demand the suit came to be filed.

3.The defense to the said suit was that the property was the ancestral property of the revision petitioner/judgement debtor. The XII Assistant Judge, City Civil Court, Chennai decreed the suit by her order dated 19.07.2013. Thereafter it is

seen that the revision petitioner has filed a first appeal on 04.02.2014 and the same has been numbered in the year 2018 as A.S.No.244 of 2018.

4.Meanwhile, the decree holder/temple had filed an Execution petition in E.P.No.4074 of 2018 on the file of the X Assistant City Civil Court, Chennai for recovery of vacant possession of the suit property. The respondent herein had filed a counter in which once again they had reiterated the contentions raised by them in the written statement. The learned X Assistant Judge ultimately by his order dated 16.08.2018 had ordered the execution petition directing the revision petitioner/Judgement debtor to hand over the vacant possession on or before 09.10.2018.

5.The learned Judge has held that no reasons whatsoever has been put forward by the judgement debtor in their counter but had raised the very same defense that they had raised in the

suit.

6.It is also seen that despite filing first appeal as early as in the year 2014 no steps had been taken by the judgement debtor/revision petitioner to number the first appeal and proceed with the first appeal. The order in E.P.No.4074 of 2014 has been challenged by the Judgement Debtor before this Court.

7.Mr.R.Hariharan, learned counsel appeared for the revision petitioner and Mr.L.Dhamodaran, learned counsel appeared for the sole respondent. Heard the counsel and perused the papers. The counter of the judgement debtor to the execution proceedings is nothing but a re-production of the written statement filed in the suit O.S.No.5853 of 2003.

8.These contentions have already been rejected by the Court below and the same is yet to be challenged by the revision petitioner though those findings remain on file to date since the

appeal that is filed by the Judgement Debtor has not reached finality. Considering the fact that the Executing Court cannot go behind the decree passed by the Trial Court, I find no infirmity in the order passed by the X Assistant Judge, City Civil Court, Chennai.

In the result the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

04.03.2019

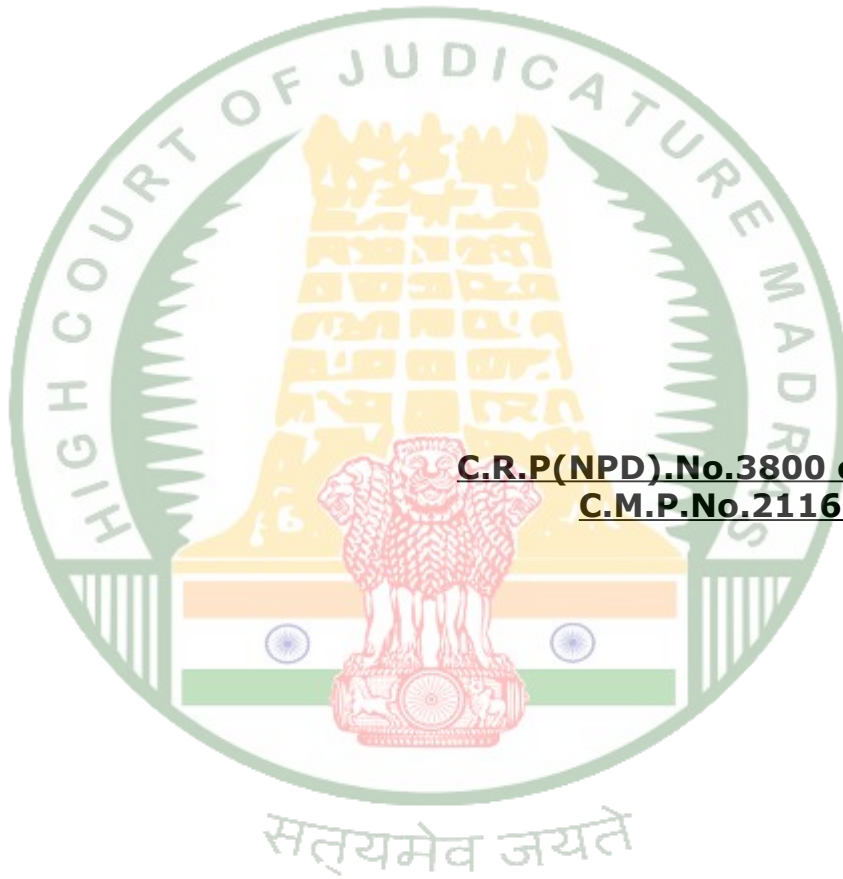
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Index : Yes/No
Speaking order/non-speaking order

To,
The X Assistant City Civil Court,
Chennai.

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P.T.ASHA, J.,

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