

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.(NPD)No.4356 of 2010

Ramalingam

.. Petitioner

Vs.

1.Anjammal

2.Loganathan

3.Ramakrishnan

4.Kamalakannan

.. Respondents

**PRAYER :** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 19.08.2010 passed in E.P.No.20 of 2008 in O.S.No.56 of 2004, on the file of District Munsif Court, Mannargudi.

For Petitioner

: Mr.S.Kingston Jerold

For Respondents

: Mr.R.Meenal for R-1

No appearance for R-2 to R-4

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**ORDER**

Challenging the order passed by the learned District Munsiff, Mannargudi in E.P.No.20 of 2008 in O.S.No.56 of 2004, dated 19.08.2010, the petitioner / plaintiff has preferred this Revision against the defendants / respondents. The petitioner is the Decree Holder and the respondents are the Judgment Debtors.

2. Relevant facts for disposal of this Revision are as follows:-

Initially the petitioner has instituted the suit against the respondents for recovery of money in O.S.No.104 of 2002 on the file of Sub Court-Tiruvarur, which was subsequently transferred and renumbered as O.S.No.56 of 2004, on the file of District Munsiff, Mannargudi. After trial, the suit came to be decreed on 26.08.2004 and subsequently, the petitioner has filed Execution Petition in E.P.No.20 of 2008 to recover the suit amount by attachment and sale of immovable properties of Judgment Debtors. After contest, the learned Judge dismissed the said Application in E.P.No.20 of 2008 in O.S.No.56 of 2004. Challenging the said dismissal order, the petitioner / Decree Holder / plaintiff is before this Court.

3. The learned counsel for the petitioner would submit that the petitioner has filed the suit against the respondents for recovery of money and obtained a Decree. Subsequently, he has filed the Execution Petition in E.P.No.20 of 2008 and sought for attachment of Item Nos. 1 and 2 in the said Petition. Though initially, the respondents were gave an undertaking before the Court below in I.A.No.258 of 2002, that they will not alienate the properties, however, E.P. was dismissed by stating that the item No.1 property has been sold before attachment and Item No.2 property has already been sold through Court auction in some other suit. The learned counsel for the petitioner further submitted that at the time of filing of the suit, the petitioner filed an Application in I.A.No.258 of 2002 to attach the property of the Judgment Debtors and in that application, the respondents have filed an undertaking affidavit that they will not alienate the property till the disposal of the suit, but whereas subsequently, they have sold the property in the year 2002 itself and hence, they violated the undertaking given by them by selling the property to the third party and the said point was not considered by the executing Court, which warrants interference.

4. The learned counsel for first respondent would submit that Item No.1 property was sold to one Durairaj on 02.08.2002 and insofar as Item

No.2 is concerned, that was sold through Court auction. On the date of filing of E.P, there was no property stands in the name of the respondents / Judgment Debtors and therefore, the learned Judge, rightly dismissed the Application.

5. Heard Mr.S.Kingston Jerold, learned counsel for the petitioner; Mr.R.Meenal, learned counsel for the first respondent and perused the materials available on record. Though notice has been served on the respondents 2 to 4, there is no representation on behalf of the respondents 2 to 4.

6. Admittedly, the petitioner has instituted a suit in O.S.No.56 of 2004 for recovery of money and obtained a Decree against the respondents and to recover the suit amount by attachment and sale of immovable property of Judgment Debtors, the petitioner has filed E.P.No.20 of 2008 and the said Application was dismissed. The Executing Court dismissed the Application on the ground that on the date of filing of E.P., Item no.(1) property was sold to third party on 02.08.2002 and Item No.(ii) property was sold through Court-auction in O.S.No.78 of 2002 and on a perusal of encumbrance certificate itself, it shows that the properties are not in the name of the Judgment Debtors.

7. It is not in dispute that during the pendency of the suit itself, the petitioner had filed an Application for Attachment Before Judgment and in the said Application, the respondents have filed an undertaking affidavit that they will not alienate the property. However, on the date of filing of E.P and passing of the order, the Item No.1 property was not stands in the name of the respondents and it was sold to one Durairaj on 02.08.2002 itself. Insofar as Item.No.2 is concerned, the property was already sold through Court auction in some other Suit in O.S.No.78 of 2002. Since the properties are not stands in the name of the respondents / Judgment Debtor, there is no perversity in the order passed by the Execution Court.

8. However, insofar as violation of undertaking is concerned, the petitioner is entitled to take action against the respondents / Judgment Debtors and workout his remedy in the manner known to law, because, the third party, who has purchased the property may not know about the suit proceedings and also the undertaking given by the Judgment Debtors and he may raise a bona-fide transaction.

9. Therefore, liberty is given to the petitioner to proceed against the respondents / Judgment Debtors, who have violated the undertaking given before the trial Court, by selling the property to third party. It is to be noted that in the affidavit of undertaking, the respondents/ Judgment Debtors have also admitted that they are having some other properties also and therefore, it is open to the petitioner to initiate proceedings on other properties stand in the name of the respondents / judgment Debtors.

10. In fine, the Civil Revision Petition is dismissed. However, there shall be no order as to costs.

28.08.2020

Index : Yes/No

speaking order/non speaking order.

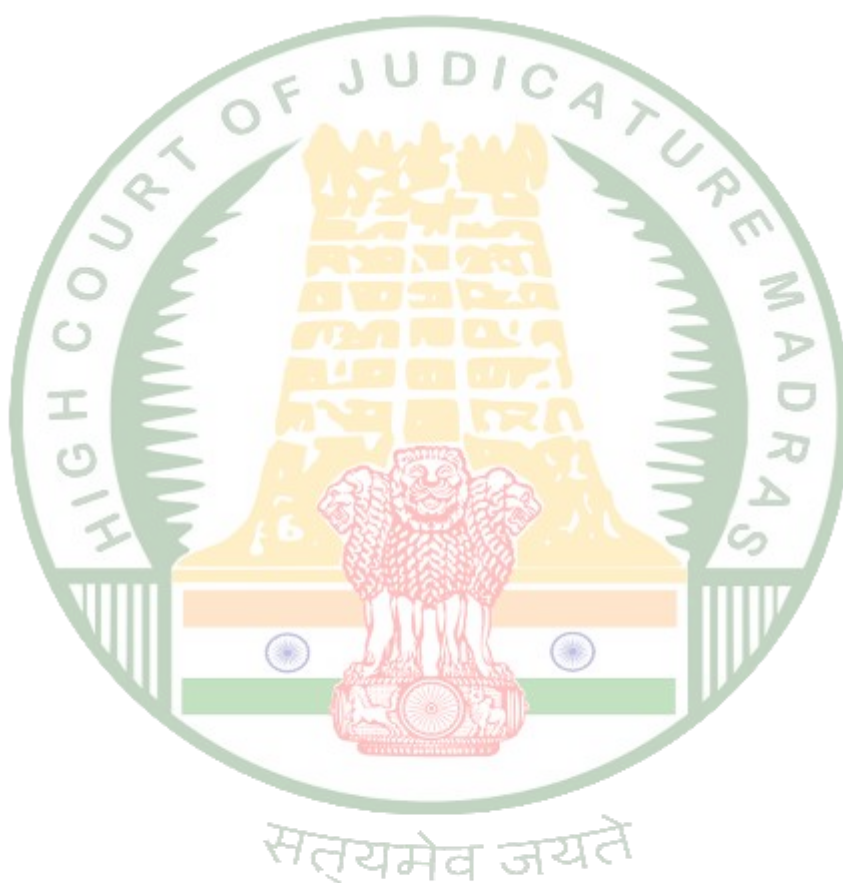
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To

The District Munsif Court,  
Mannargudi.

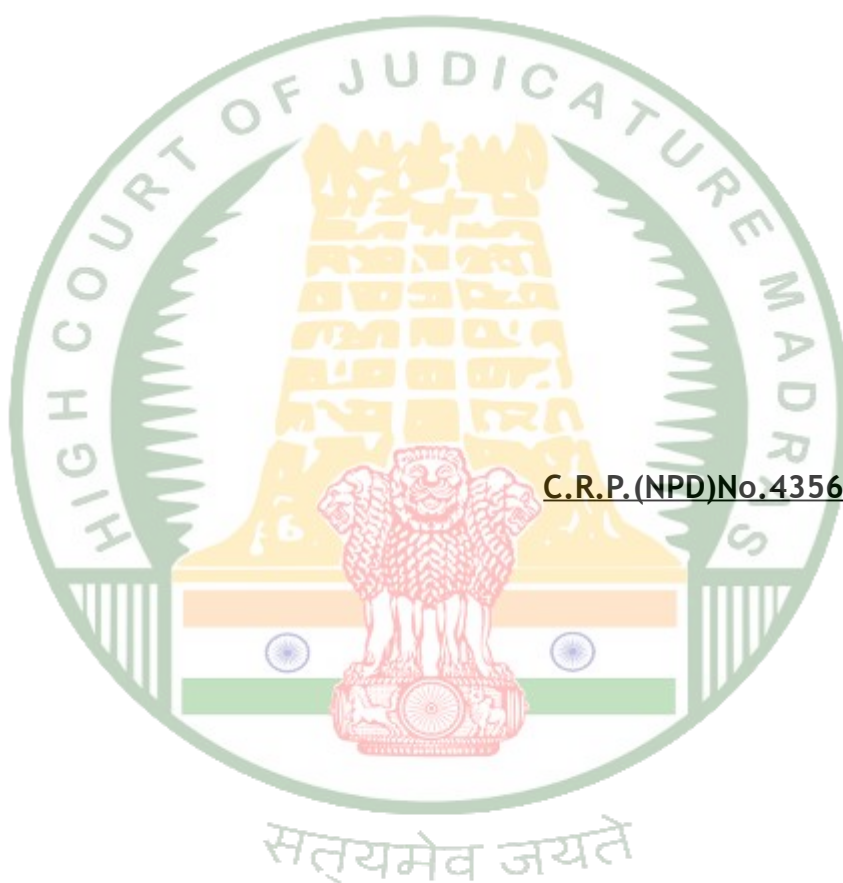


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