

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.748 of 2011

1.S.Dhamodarasamy

2.Gandhimathi

... Petitioners

Versus

1.V.Unnikrishnan

2.N.K.Gopal

3.S.Kanakalatha

4.The Joint-II Sub-Registrar,
Raja Street,
Coimbatore - 641 001.

... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India, against the order dated 01.11.2010 made in C.F.R.No.33534 of 2010 on the file of the Principal District Munsif Court, Coimbatore.

For petitioners : Mr.V.Andhamoorthy

For Respondents : Mr.S.Jaganathan, (for R4)
Government Advocate (C.S)

: No Appearance - R1, R2 & R3

ORDER

The petitioners herein are the plaintiffs in the un-numbered suit in C.F.R.No.33534 of 2010.

2.The plaintiffs filed the above suit seeking to set aside and raise the order of attachment dated 08.02.1995 passed in I.A.No.266 of 1995 in O.S.No.187 of 1995 which was duly registered on the file of the fourth respondent/The Joint-II Sub-Registrar, Coimbatore.

3.The above said un-numbered suit filed by the plaintiffs was rejected by the trial court by an order dated 01.11.2010 on the ground that no prior notice was served on the fourth respondent/fourth defendant as required under Section 80 of CPC, hence, the petitioners are constrained to file the present revision petition.

4.Heard the learned counsel for the petitioners and the learned counsel appearing for the fourth respondent/ The Joint-II Sub-Registrar, Coimbatore. None appeared on behalf of the other respondents 1 to 3.

5.From the records, it is seen that Gopal, the second respondent/ second defendant had filed a suit against one Unnikrishnan namely, the first respondent/first defendant for recovery of money based on the mortgage in O.S. No. 187 of 1995. Pending suit, an application in I.A.No.266 of 1995 was filed for attachment before judgment of the suit property and the same

was ordered and necessary endorsement has also been made by the fourth respondent/The Joint-II Sub-Registrar on 26.11.2001. On the very same day viz., 26.11.2001, the third respondent/Kanakalatha had purchased the suit property from the first defendant, she in turn sold the said suit property to the petitioners herein/plaintiffs on 27.01.2006. When the petitioners/plaintiffs approached the Bank for construction of building, at that time only they came to know about that mortgage between the first respondent/first defendant and the second respondent/second defendant and the sale made in favour of third respondent/third defendant on 26.11.2001. It is also seen that the third respondent/third defendant duly discharged the mortgage and the same was registered under Doc.No.1912 of 2001 on the file of the Joint-II, Sub-Registrar, Coimbatore, whereby the entire loan amount prayed in the suit O.S.No.187 of 1995 has been discharged.

6.On the above factual background, these petitioners/plaintiffs have filed the above un-numbered suit. The suit was filed without issuing prior notice to the Joint -II, Sub-Registrar, Coimbatore, who is arrayed as fourth defendant in the suit. The suit was filed for raising the order of attachment passed in O.S. No. 187 of 1995. When the entire mortgage amount has been paid by the vendor of the petitioners/plaintiffs herein and no amount is due on the mortgage, the rejection of the plaint on the ground that notice under Section 80 CPC has not been served on the fourth defendant is erroneous. Hence, in view of the same, the order passed by the Trial Court

on 01.11.2010 passed in C.F.R.No.33534 of 2010 is set aside and the Principal District Munsif of Coimbatore is directed to number the suit and dispose of the same, within a period of twelve weeks from the date of receipt of a copy of this order, the Civil Revision Petition is allowed. No costs.

21.01.2020

Index : yes
Internet : yes/no
Speaking/Non-Speaking order

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To

The Principal District Munsif Court, Coimbatore.

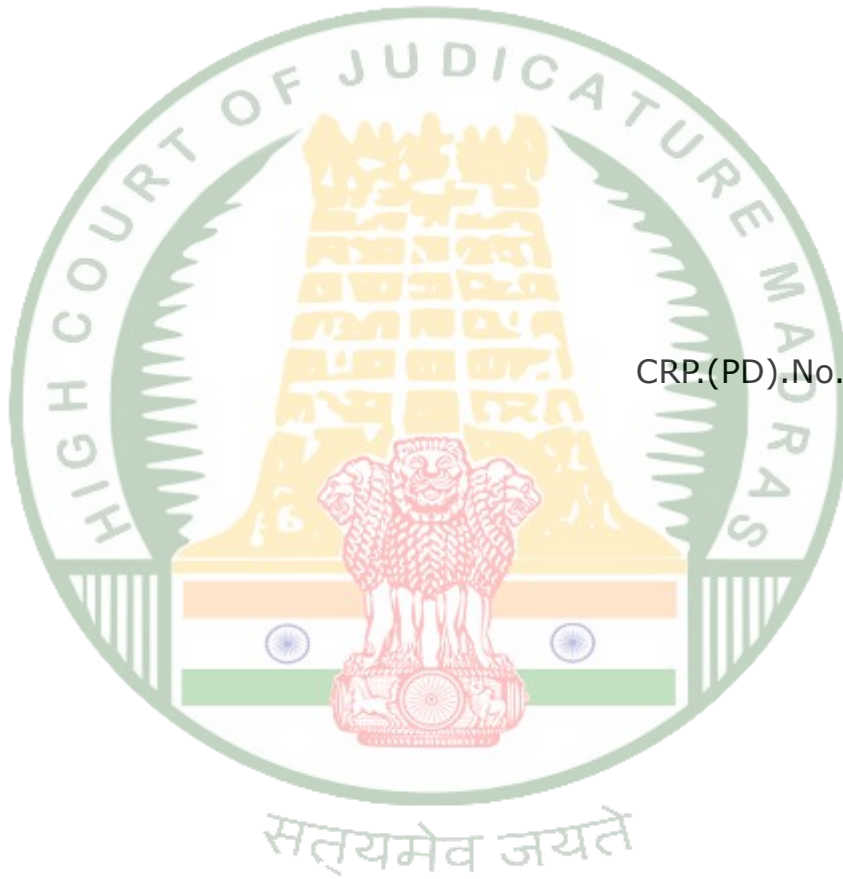


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