

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3458 of 2012
& M.P.No.1 of 2012

S.Ramakrishnan

.. Petitioner/Defendant/
Judgment Debtor

Vs.

1.Arjunlal Uttamchand (died)

2.Rajkumari A.Hinduja

3.Rajendra Kumar A.Hinduja

4.Anjana R.Nichani

5.Chandni Nichani

6.Shibani Bansal

.. Respondents/Plaintiffs/
Decree Holder

(Respondents 2 to 6 brought on record as legal heirs of the deceased sole respondent viz., Arjunlal Uttamchand vide Court order dated 02.02.2017 made in C.M.P.No.1462/2017 in CRP.No.3458 of 2012 by MVMJ)

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 22.08.2012 made in E.P.No.279 of 2011 in O.S.No.2677 of 2004 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Ms.S.Vijayalakshmi
For R2 to R6 : Mrs.A.L.Gandhimathi

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 22.08.2012 made in E.P.No.279 of 2011 in O.S.No.2677 of 2004 on the file of the IX Assistant City Civil Court, Chennai.

2.The petitioner is the judgment debtor and respondent in E.P.No.279 of 2011. The 1st respondent filed the said E.P. for attachment of rent payable by the tenant to the judgment debtor by issue of pro order to the Garnishee viz., M/s.Tata Consultancy Services, represented by its Accountant. The petitioner filed counter and opposed the said E.P. The

learned Judge allowed E.P. and ordered attachment of the rent payable by the petitioner.

3. Against the said order dated 22.08.2012 made in E.P.No.279 of 2011 in O.S.No.2677 of 2004, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner contended that the petitioner filed leave to defend petition, which was dismissed and the respondents have obtained exparte decree and it is not executable. The learned Judge failed to see 30% interest awarded is invalid as only 6% interest can be awarded. The decree was obtained by an individual, but E.P. was filed by HUF represented by its Kartha and therefore, E.P. is not maintainable.

5. The learned counsel appearing for the respondents contended that the 1st respondent filed suit as under chapter suit and the petition

filed by the petitioner for leave to defend the suit was dismissed, as there was no triable issues. After dismissal of the petition for leave to defend, the decree has been passed as per the procedure. The decree obtained by the 1st respondent Arjunlal Uttamchand is executable and E.P. was filed only by him as an individual. The Executing Court cannot go beyond the decree and the learned Judge has rightly rejected the various objections raised by the petitioner, ordered E.P. attaching the rent payable by the petitioner and prayed for dismissal of the Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

7.The first contention of the learned counsel appearing for the petitioner is that the decree obtained by the 1st respondent is exparte decree. According to the learned counsel appearing for the petitioner, the petition for leave to defend the suit was dismissed and hence, the decree

passed is exparte decree. This contention is without merits. When leave to defend petition is dismissed and if it was not challenged, the decree has to be passed as per the provisions of the under chapter suit and the decree will not be an exparte decree.

8.The second contention of the learned counsel appearing for the petitioner is that the trial Court erred in granting interest at the rate of 30% per annum and ought to have granted interest only at the rate of 6% per annum. The petitioner did not challenge the decree by filing any appeal or revision and therefore now she cannot pray for modification of the decree by the Executing Court. The Executing Court is bound by the decree and it has to execute the decree.

9.The third contention of the learned counsel appearing for the petitioner is that the decree was obtained by individual, but E.P. was filed by HUF represented by its Kartha and therefore, liable to be dismissed. A verification of E.P. shows that E.P. has been filed by the 1st respondent

and he has signed only as an individual and not as Kartha of HUF. Further, the 1st respondent/decreed holder died pending Civil Revision Petition and the respondents 2 to 6 are brought on record as the legal heirs of the deceased 1st respondent. If really, E.P. was filed by HUF, there is no necessity to bring the respondents 2 to 6 on record as legal heirs of the 1st respondent. The learned Judge has considered all the materials available on record in proper perspective and has given valid reason for allowing E.P. and for ordering attachment.

10. For the above reasons, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

17.09.2020

Index : Yes/No

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To

The IX Assistant Judge

City Civil Court, Chennai.

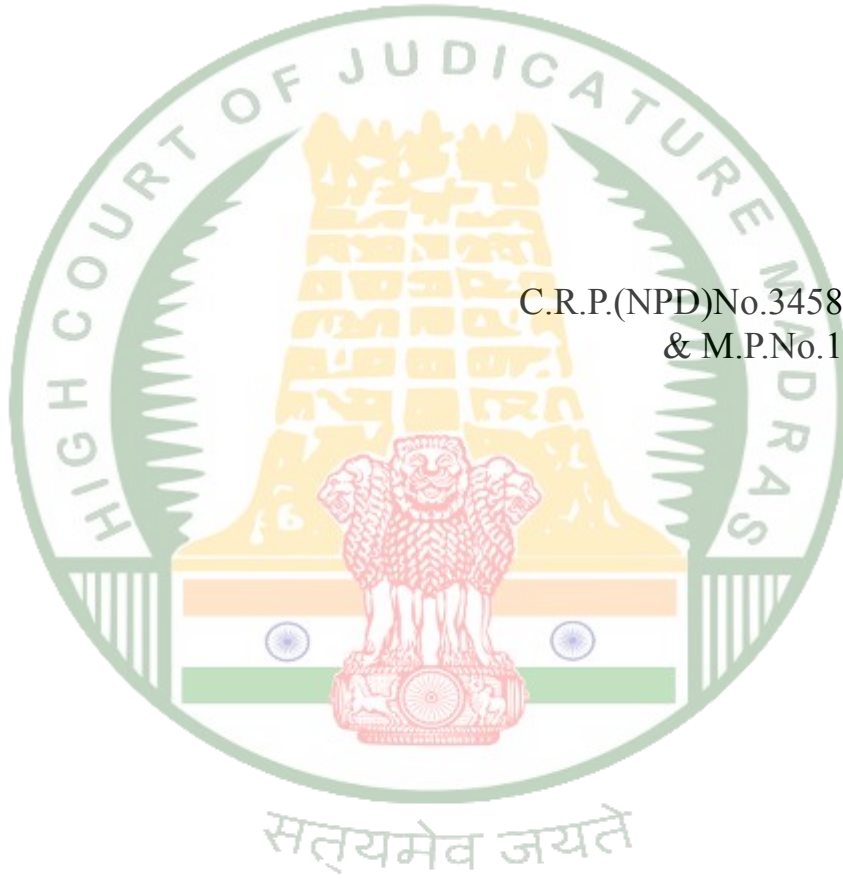


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V.M.VELUMANI, J.

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