

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.2276 of 2015

and

M.P.No.1 of 2015

1.R.Chinnammal
2.R.Venkatesh
3.R.Sreerangan
4.R.Pavayee

... Petitioners

Vs.

1.G.Padmavathi
2.G.Selvi
3.G.Karthikeyan
4.G.Sakthi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the petition and order made in R.E.A.No.14 of 2015 in R.E.P.No.165 of 2014 in O.S.No.1152 of 2009 on the file of the I Additional District Munsif, Salem, dated 30.04.2015.

For Petitioners : Mr.K.A.Ravindran

For Respondents : M/s.J.Prithivi
for Mr.A.K.Kumarasamy
Senior Counsel

ORDER

This Civil Revision Petition has been filed by the respondents/decreed holders against the order passed in R.E.A.No.14 of 2015 in R.E.P.No.165 of 2014 in O.S.No.1152 of 2009 on the file of the I Additional District Munsif, Salem, dated 30.04.2015.

2. The respondents herein had filed an application in R.E.A.No.14 of 2015 in R.E.P.No.165 of 2014 in O.S.No.1152 of 2009 under Section 151 of CPC, to recall the delivery warrant issued to the Court Amin.

3. The learned I Additional District Munsif, by the order dated 30.04.2015 allowed the said petition on the ground that already the ex parte decree was set aside. Feeling aggrieved, the respondents therein/decreed holders have filed the present Civil Revision Petition.

4. The learned counsel for the petitioners has submitted that the respondents herein had filed R.E.A.No.14 of 2015 to recall the

delivery warrant issued to the Court Amin, but before passing order on the said petition, the Court Amin had executed the delivery warrant and returned the same to the Court and in such a case, the learned I Additional District Munsif should have dismissed the said petition as having become infructuous, on the contrary, he has allowed the said petition and hence, he prayed to set aside the order passed by the I Additional District Munsif, Salem in R.E.A.No.14 of 2015.

5. Per contra, the learned counsel for the respondents has submitted that actually delivery of possession has not been effected and only for record the Court Amin made an endorsement as delivery warrant has been executed. She further submitted that the Executing Court has not recorded the delivery and in the meanwhile exparte decree itself has been set aside and taking into consideration the aforesaid facts, the learned District Munsif had allowed the petition in R.E.A.No.14 of 2015 and hence, she prayed to dismiss this Civil Revision Petition.

6. A perusal of the prayer made in R.E.A.No.14 of 2015 shows that the said petition was filed only to recall the delivery warrant issued to the Court Amin. But before disposing of the said petition, the

warrant had been executed and returned to the Court and in such a case, the learned District Munsif should have dismissed the petition as having become infructuous and should have directed the petitioners to file a petition for restitution. Instead of that he has allowed the said petition. The order passed by the learned District Munsif is not sustainable on technical grounds. Hence, this Civil Revision Petition has to be allowed.

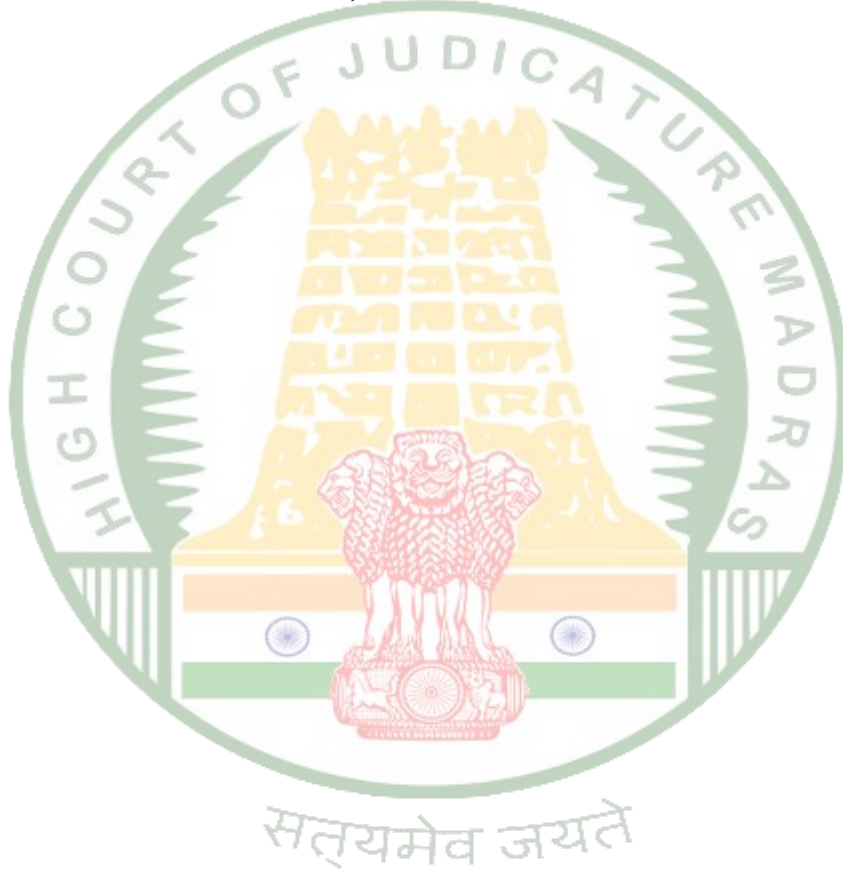
7. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The order passed by the learned I Additional District Munsif, Salem, in R.E.A.No.14 of 2015 dated 30.04.2015 is set aside. Consequently, the petition in R.E.A.No.14 of 2015 is dismissed. It is open to the respondents to file a petition not to record the delivery of possession, if the possession is not taken by the Court Amin. In case, possession had already been taken by the Court Amin, they can file a petition for restitution by invoking the provision of Section 144 of CPC.

14.10.2020

Internet : Yes/No
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To

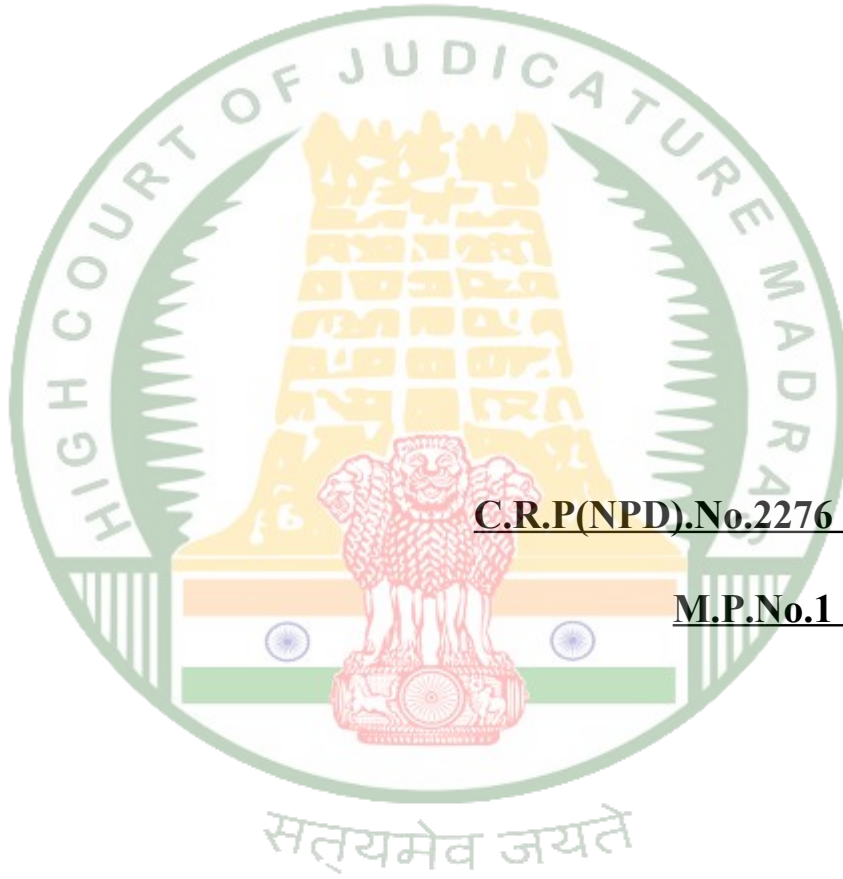
The I Additional District Munsif, Salem.



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