

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD)No.3749 of 2015
and M.P.No.1 of 2015

R. Deivasigamani (died)

1.Kalyani

2. Alamelu @ Porkodi

... Petitioners/Respondents

vs.

G. Subramani

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in E.P.No.69 of 2008 in O.S.No.18 of 2006 dated 25.08.2014 on the file of Additional District Munsif Court, Vaniyambadi, Vellore District.

For Petitioners ... Mr.PA.Sudesh Kumar

For Respondent ... Mr.K.A. Mahendrakumar

ORDER

This Civil Revision Petition has been filed by the respondents / judgment debtors against the order passed by the Additional District

Munsif, Vaniyambadi, in E.P.No.69 of 2008 in O.S.No.18 of 2006 dated 25.08.2014.

2. The respondent herein had filed E.P.No.69 of 2008 on the file of the Additional District Munsif, Vaniyambadi, to execute the money decree passed in O.S.No.18 of 2006 dated 20.06.2008. The petitioners herein opposed the said execution petition by filing counter. However, the learned District Munsif, Vaniyambadi, by the order dated 25.08.2014 had allowed the said execution petition and ordered for attachment of the petition mentioned properties. Feeling aggrieved, the respondents/judgment debtors have filed the present Civil Revision Petition.

3. Heard Mr.PA.Sudesh Kumar, the learned counsel for the petitioners and Mr.K.A. Mahendrakumar, the learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the respondent herein had filed a suit in O.S.No.18 of 2006 on the file of the

Additional District Munsif, Vaniyambadi, against one Deivasigamani for recovery of Rs.31,750/- based on a promissory note said to have been executed by him. He further submitted that during pendency of the said suit, the said Deivasigamani died and hence his wife and his minor daughter (petitioners herein) were impleaded as defendants 2 and 3 and thereafter, a decree was passed in the said suit on 20.06.2008 directing the petitioners herein to pay the decree amount from and out of the estate of the first defendant namely Deivasigamani, which is, in their hands. He further submitted that after passing of the said decree, the petitioners herein had sold the petition mentioned properties to one Kumar under a registered sale deed dated 26.12.2008 and thereafter, the respondent had filed an execution petition in E.P.No.69 of 2008 for recovery of the decree amount by attachment and sale of the petition mentioned properties. He further submitted that after receipt of notice, the petitioners herein entered appearance in the said EP and filed a counter stating that the properties were already sold to one Kumar and hence, the E.P is not maintainable against them. But without considering the said facts, the Executing Court had allowed the said Execution Petition and passed an order of attachment

of the petition mentioned property. He further submitted that as per Section 64 of CPC, the property of the judgment debtor alone can be attached, but in this case, even before filing of the execution petition, the petitioners herein had sold the properties to one Kumar and also filed a registration copy of the said sale deed and marked as Ex.P1 and even thereafter, the Executing Court had proceeded against the said property without impleading the said Kumar as a party and hence the order passed by the executing court is liable to be set aside and therefore, he prayed to allow this Civil Revision Petition.

5. The learned counsel for the petitioners in support of the aforesaid contentions, relied upon the decision in ***Hamda Ammal Vs. Avadiappa Pathar and Others, 1991 (2) LW (SC) 110.***

6. Per contra, the learned counsel for the respondent / decree holder has submitted that admittedly only after passing of the decree against the petitioners herein, they have sold the property to one Kumar under Ex.P1 sale deed. He further submitted that when the first petitioner herein while examining herself as RW1 has categorically admitted in her evidence that

they have not received any sale consideration and taking into consideration of the said fact, the executing court has held that the said sale is only a sham and nominal and as such, there is no bar to proceed against the said properties. He further submitted that even assuming that the petitioners have validly sold the petition mentioned properties to one Kumar, it is for the said Kumar to file a claim petition after the property is attached. He further submitted that once the petitioners sold the property, they have no subsisting interest in the said property to raise any objection with regard to passing of an order against the said property and therefore, he prayed to dismiss this petition.

7. A perusal of the typed set of papers filed by the petitioners shows that the respondent herein had filed a suit in O.S.No.18 of 2006 on the file of the Additional District Munsif, Vaniyambadi, for recovery of Rs.31,750/- with subsequent interest against Deivasigamani (D1) based on the promissory note said to have been executed by him. During pendency of the said suit, the said Deivasigamani died and hence, the petitioners herein who are being the wife and daughter of the said Deivasigamani have been

impleaded as defendants 2 and 3 and thereafter a decree was passed on 20.06.2008 directing the petitioners herein to pay the decree amount from and out of the estate of the deceased first defendant which is in the hands of the petitioners herein. Thereafter, the respondent herein had filed an execution petition in E.P.No.69 of 2008 against the petitioners herein for recovery of the decree amount by attachment and sale of the petition mentioned property.

8. The case of the petitioners is that after passing of the said decree, they had sold the petition mentioned properties on 26.12.2008 to one Kumar. Their further case is that since no decree has been passed against the said Kumar, the said properties cannot be attached in view of Section 64 of CPC. If the petitioners sold the property to a third party, they will not have any subsisting interest in the said property. Even as per the decree, the petitioners have to discharge the said debt only from and out of the estate which is available in their hands. If no estate of the deceased first defendant is available in their hands, they need not pay the decree amount. It is for the purchaser to file an appropriate petition before the court to declare his title

over the said property. It is well settled that a person who is having subsisting interest alone can contest the case, but in this case, admittedly, the petitioners had sold the petition mentioned property to one Kumar. In such a case, it is for the said Kumar to file an appropriate petition to establish his title. Now, the Executing Court has not passed an order to sell the property. It has simply passed the order to attach the property. The purpose of attachment is to prohibit the owner of the said property from creating any encumbrance. However, to prohibit creation of encumbrance if the property is attached, then as already pointed out that the person who is having better title can file a claim petition by invoking provision of Order 21 Rule 58 of CPC to raise the attachment. So, this court is of the view that the petitioners are in no way prejudiced by the impugned order passed by the Executing Court. Hence, this Civil Revision Petition is liable to be dismissed.

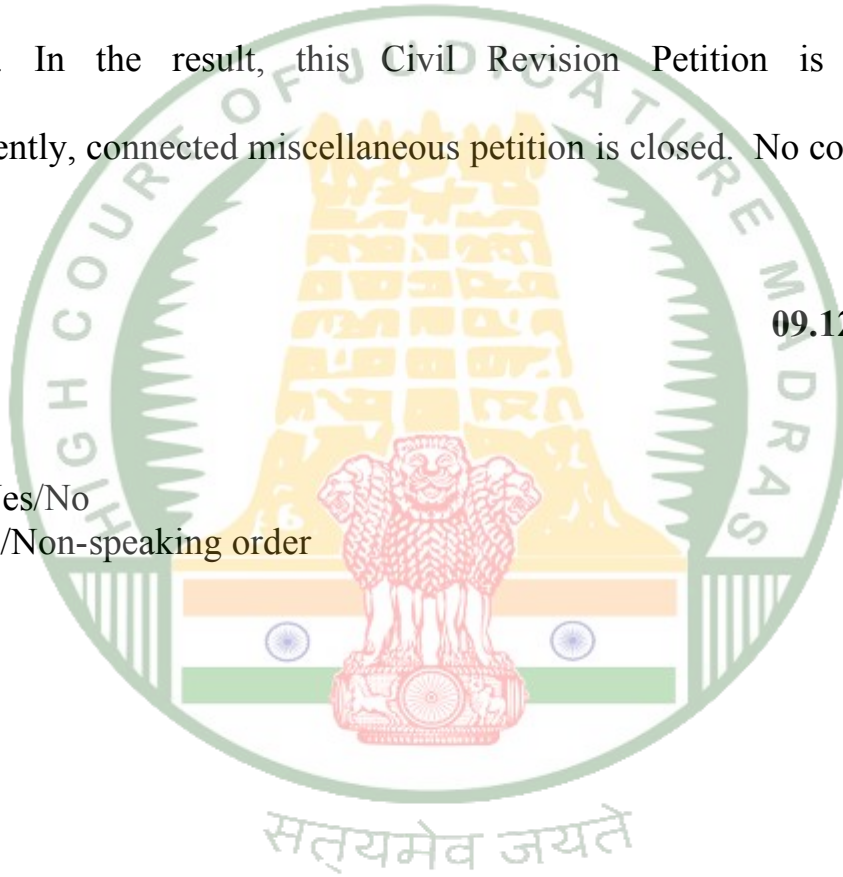
9. In *Hamda Ammal Vs. Avadiappa, 1991 (2) LW 110 SC*, the facts are different. In that case, the person who purchased the property had raised a question as the property should not have been attached whereas in this

case, the persons who sold the property opposed the Execution Petition. Therefore, the said decision will not apply to the facts and circumstances of the present case.

10. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

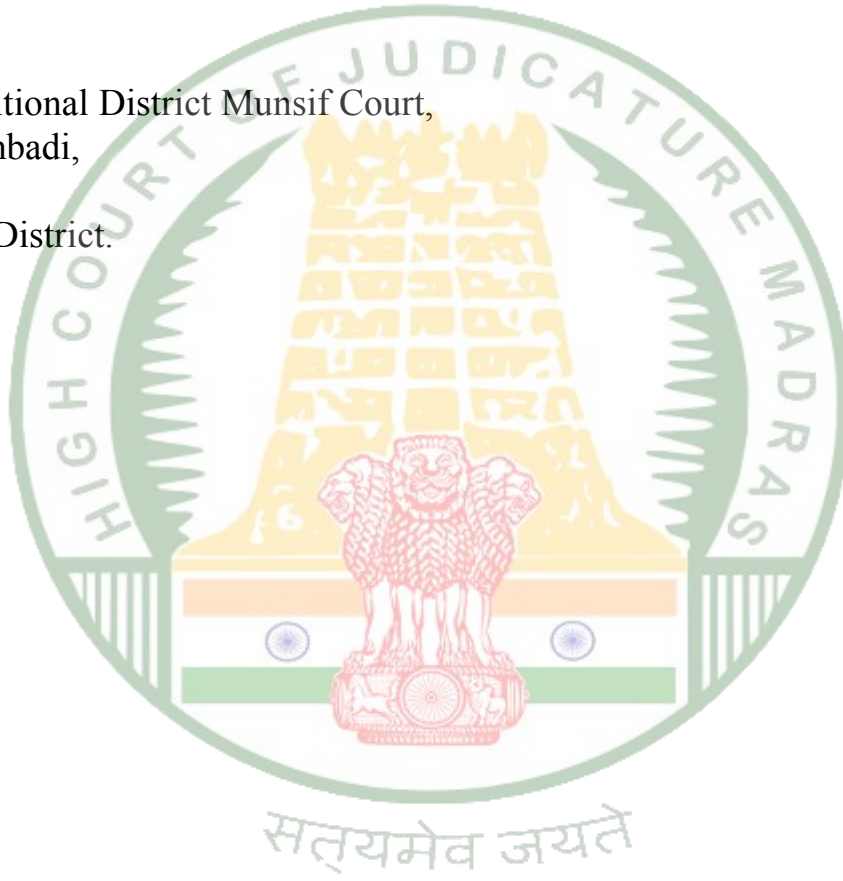
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Index : Yes/No
Speaking/Non-speaking order
Gv



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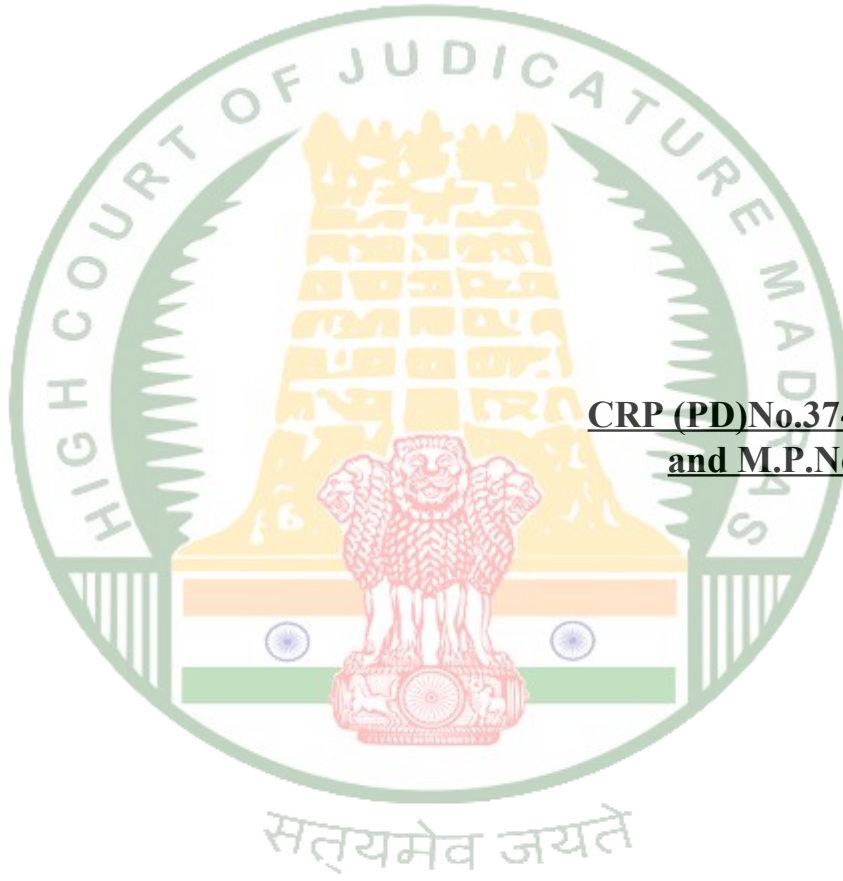
To
The Additional District Munsif Court,
Vaniyambadi,
Vellore District.



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P. RAJAMANICKAM,J.
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