

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4533 of 2015

and

M.P.No.1 of 2015

1. T.Leelavathi
2. Khousalya
3. M.Prabhu

... Petitioners

Vs.

V.Raju

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the order dated 07.07.2015 passed in EP.No.85 of 2011 in OS.No.515 of 2004 on the file of the First Additional District Munsif, Erode.

For Petitioners

: Mr.J.Prithivi
for M/s.A.K.Kumaraswamy
Senior Counsel

For Respondents

: Ms.L.Leela Raman
for Mr.T.M.Hariharan

ORDER

This Civil Revision Petition has been filed by the Judgment Debtors /respondents against the order passed by the I Additional District Munsif, Erode in E.P.No.85 of 2011 in OS.No.515 of 2004 dated 07.07.2015.

2. The respondent herein had filed a suit in OS.No.515 of 2014 on the file of the I Additional District Munsif, Erode and obtained a decree for recovery of Rs.75,000/- with subsequent interest. Subsequently, he filed an Execution Petition in EP.No.85 of 2011 for realization of the decree amount by attaching and selling the petition mentioned property. The learned District Munsif had allowed the said Execution Petition and directed to sell the suit property by court auction. Feeling aggrieved, the the judgment debtors have filed the present Civil Revision Petition.

3. Heard Ms.J.Prithivi for Mr.A.K.Kumaraswamy, the learned counsel for the petitioners and Ms.Leela Raman for Mr.T.M.Hariharan, the learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the respondent herein had issued a receipt (Ex.R.1) stating that he had received a sum of Rs.50,000/- on 03.02.2003 and also received another sum of Rs.50,000/- on 25.04.2003. She further submitted that in the said Ex.R1 Receipt, the respondent/decree holder had signed and two witnesses were also attested in the said receipt. She further submitted that in order to prove the said Ex.R.1 Receipt, the petitioners herein have examined the said witnesses as RWS 1 and 2 and thereby, the petitioners have discharged the burden that they already paid the decree amount, but, the learned District Munsif without considering the said fact had allowed the said Execution Petition. She further submitted that the property was attached in the year 2004 and hence, the suit property has to be reattached by mentioning the present market value, but, the said request also not considered by the lower court. Therefore, she prayed to allow this Civil Revision Petition and set aside the order passed by the learned Additional District Munsif, Erode in EP.No.85 of 2011 and dismiss the said execution petition.

5. Per contra, the learned counsel for the respondent/decree holder

has submitted that the suit promissory note was executed by one Madheshwaran and subsequently he died and hence, the suit was filed against the petitioners who are the legal heirs of the said Madheshwaran. She further submitted that the suit was filed in the year 2004 and in the said suit, summons were served on the petitioners herein and after receipt of the summons, the petitioners herein had entered appearance by engaging an Advocate Mr.S.V.Vasudevan and subsequently they remained exparte and thereafter an exparte decree was passed. She further submitted that based on the said decree, the respondent herein had filed two Execution Petitions in EP.Nos.115 of 2007 and 195 of 2008 and in the said EPs Notice were sent, but in the said EPs, the petitioners herein took a stand that they paid Rs.50,000/- to the decree holder on 03.02.2003 and Rs.50,000/- on 25.04.2003 and got Ex.R.1 Receipt. She further submitted that if really they paid the said amount as mentioned in Ex.R1, they would have taken the said defence in the suit itself, but, they have not taken such defence in the suit. She further submitted that the said Ex.R1 has been fabricated by the petitioners, only with a view to defraud the lawful claim of the decree holder and taking into consideration the aforesaid facts, the trial court had rightly rejected

their contentions and passed orders in the Execution Petition to proceed further and hence in the said order, this Court need not interfere. Therefore, she prayed to dismiss the suit.

6. A perusal of the typed set of papers filed by the petitioner would show that the respondent herein had filed a suit in OS.No.515 of 2004 on the file of the II Additional District Munsif, Erode stating that one Madheshwaran borrowed a sum of Rs.50,000/- from the respondent and executed a promissory note and subsequently he died on 02.11.2002 leaving behind the petitioners as his legal representatives. In the said suit, after receipt of summons, the petitioners herein engaged one Advocate Mr.S.V.Vasudevan to defend their case, but, subsequently, they remained exparte and thereafter, an exparte decree was passed on 24.02.2005. According to the petitioners, they paid a sum of Rs.50,000/- to the respondent on 03.02.2003 and subsequently on 25.04.2003, they paid another sum of Rs.50,000/- to the respondent and acknowledging the said payment, the respondent had issued Ex.R1 Receipt. In Ex.R1 Receipt, it is stated that on 03.02.2003, the respondent herein gave a sum of Rs.1,50,000/- to the first petitioner herein and towards the said debt,

the respondent herein received a sum of Rs.50,000/- on the same day. It is nobody's case that on 03.02.2003, the respondent herein had lent any amount to the first petitioner herein. The case of the respondent is that it was only the first petitioner's husband Madheswaran had borrowed the money from him that too on 30.01.2001, whereas in Ex.R1 it is stated that the first petitioner had borrowed money on 03.02.2003. Therefore, it cannot be said that Ex.R1 was issued relating to the transaction took place between the said Madheswaran and the respondent herein.

7. Even assuming that the aforesaid receipt was issued only to discharge the amount which was borrowed by the first petitioner's husband Madheswaran, the said Ex.R1 Receipt is dated 03.02.2003, whereas, the trial court had passed decree only on 24.02.2005. So, if really the said receipt was issued even before passing decree, that should be produced before the trial court before passing decree. After passing decree, if any amount is paid that can be taken into consideration by the Executing Court. Before passing decree, if any amount is paid that should be considered by the trial court only and not by the executing court. The Executing Court has to execute the decree as it is. It can not

go behind the decree. Therefore, the defence setup by the petitioners that they discharged the suit debt vide Ex.R1 cannot be accepted.

8. The next contention of the petitioners is that the property was attached in the year 2004 and hence, it has to be re-attached and fresh value has to be fixed, The said contention also cannot be accepted. Once property is attached, so long as the EP continues, the attachment also shall continue. If the petitioners have not accepted the value fixed by the court, they can also give their value and in such a case, the executing court has to mention both the values in the sale proclamation. Therefore, this Court does not find any irregularity or illegality in the order passed by the lower court. Hence, this Civil Revision Petition is liable to be dismissed.

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

24.11.2020

Vv

Index :Yes/No

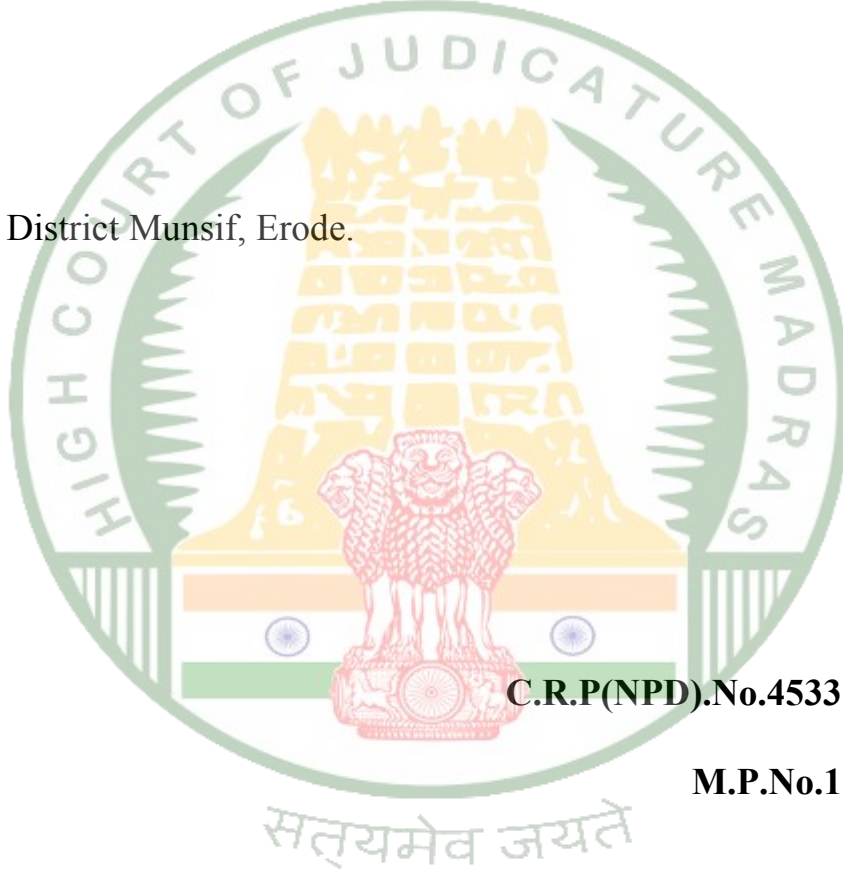
Internet : Yes/No

P.RAJAMANICKAM.J.,

Vv

To

The First District Munsif, Erode.



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