

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD)No.2574 of 2018
and
C.M.P.No.15510 of 2018

Ravichandran

...Petitioner

Vs.

1.Dhanalakshmi
2.Rajamani
3.Saradha

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, against the fair and decreetal order passed in unnumbered I.A., dated 25.01.2018 in O.S.No.119 of 2008 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

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For Petitioner : Mr.P.A.Sudesh Kumar

For Respondents : Mr.K.Sivasubramaniam for R3
for Mr.T.M.Hariharan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in unnumbered I.A., dated 25.01.2018 in O.S.No.119 of 2008 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

2. The petitioner, who is a third party to the money suit in O.S.No.119 of 2008 which was decreed exparte on 08.08.2008 has come up with this Civil Revision Petition against an order refusing to condone the delay is seeking to set aside the exparte decree. The first respondent sued second respondent for recovery of money in O.S.No.119 of 2008 and the suit came to be decreed exparte on 08.08.2008. The said decree was put in execution and the property of the second respondent was attached and brought to sale. It is stated that the property has been sold in execution also. It is, at this juncture, nearly after 9 years from the date of the exparte decree, the petitioner has come up with this novel idea seeking to set aside the exparte decree along with an application for condonation of delay. The

application was rejected by the trial Court even without being numbered. Aggrieved by which, the petitioner has come up with this Civil Revision Petition.

3. Heard, Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner and Mr.K.Sivasubramaniam, learned counsel appearing for the third respondent/auction purchaser.

4. I do not find any error in the order of the Trial Court in order to enable to meet with and interfere with the same and under Section 115 of the Code of Civil Procedure. The very application in my opinion is wholly misconceived. The decree is one for recovery of money against the second respondent. If the petitioner claims any right to the property which has been sold in Court auction, it is open to the petitioner to take any of the proceedings that are available to him under Order 21 of the Code of Civil Procedure. He can either seek to raise an attachment of under Order 21 Rule 58 or he can obstruct to the execution of the decree under Order 21 Rule 97. He cannot seek to set aside the exparte decree and offer to pay the decree amount in the Original Side, after the Execution Proceedings have

taken place and the sale has also been effected in execution of the decree.
Hence, I do not think that there is any need to interfere with the order of the Trial Court.

5. This Civil Revision Petition is dismissed leaving it open to the petitioner to resort to any remedy that may be available to him under Order 21 of the Code of Civil Procedure. It is seen that by virtue of the interim conditional order the petitioner has deposited a sum of Rs.25,000/- to the credit of the suit. Now that, I have dismissed the Civil Revision Petition, the said sum shall be paid over to the petitioner herein. No costs. Consequently, connected miscellaneous petition is also closed.

19-08-2020

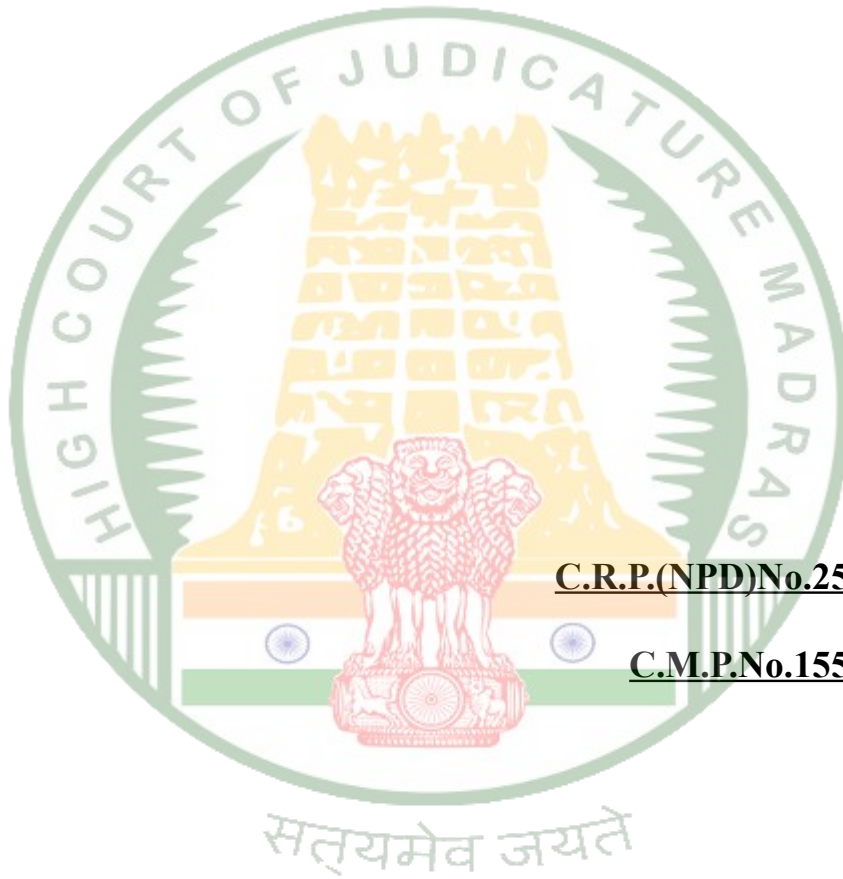
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To

The Principal District Munsif Court,
Tirupattur, Vellore District.

CRP.(NPD)No.2574 of 2018
and
CMP.No.15510 of 2018

R.SUBRAMANIAN, J.
dna



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