

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 05.11.2020]

[ORDERS PRONOUNCED ON :06.11.2020]

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).Nos.1974 and 1975 of 2020
and
C.M.P.Nos.12251 and 12253 of 2020

P.SIVAKUMAR

....Petitioner

Vs

- 1 N.THANGARAJ
- 2 S.MUTHUSAMY
- 3 BALASUBRAMANIAM

...Respondents

Prayer:- Petition filed under Section 227 of Constitution of India, praying to set-aside the fair and decreetal order dated 04-08-2020 passed in E.A.Nos.9 & 10 of 2019 in E.P.No.12/2018 pending on the file of Learned District Munsif Dharapuram.

For Petitioner

: Dr.R.Gouri

ORDER

The third party/claim petitioner is the revision petitioner herein.

2. This petition has been filed under Article 227 Constitution of India to set aside the order passed in E.A.Nos.9 & 10/2019.

3. The first respondent herein is the Judgment Debtor holder. They have filed for eviction and obtained order of the eviction. Subsequently, they have filed E.P.No.12/2008 for delivery of possession in the said E.P.

4. The present petitioner filed a claim petition under order 21 Rule 58 of C.P.C and E.A.No.10/19 is filed to stay all the proceedings until disposal of the claim application filed in E.A.No.9/2019 and both the petitions were dismissed and hence, the Civil Revision Petition.

5. The respondents 1 & 2 filed a suit R.C.O.P for rejectment. In R.C.O.P.No.16/2014 in which they obtained an order of the eviction on 29.08.2017. They have filed E.P.No.12/2018. They obtained an order of delivery. While delivery order, these two applications have been filed by one Sivakumar, S/o.Ponniah claiming that he is the co-sharer of the property. The alleged sale deed in favour of the respondents 1&2 by his mother Nallammal is null and void and he has also filed O.S.No.21/19 to

set aside the alleged sale deed dated 03.06.2019. By a common order dated 04.08.2020, both these applications have been dismissed holding that the petitioner has come forward with specific case that the suit property is a joint family property not the individual property of Nallamani. The alleged sale deed in favour of the respondent dated 03.06.2009 is null and void in respect of his share and the order of eviction passed in R.C.O.P.No.6/14 is not binding upon him and hence, he has filed two suits before the District Munsif Court in O.S.No.39/18 and O.S.No.21/19 and both are pending and hence, he sought for the stay further proceedings in the execution.

6. In the enquiry in E.A.No.9/19 P.W.1, P.W.2, P.W.3 were examined and Exhibits P1 to P7 were marked. On the side of the respondent, Exhibits R1 and R2 were marked.

7. The learned counsel appearing for the revision petitioner contended that the sale deed in favour of the respondents 1&2 is null and void since it is a Hindu joint family property and without considering the same, the Execution Court has dismissed the petition.

8. In the cross-examination during the enquiry P.W.1 has admitted that he has not filed any document to show the suit property is a

joint family property and also that as per Exhibits R1 and R2 were mortgaged deed executed by her mother. Accordingly, the property was mortgaged to the Co-operative Urban Bank and in the very same which the document the mother, father and the petitioner were shown as Christians.

9. Accordingly, the Execution Court has come to the conclusion that the petition has failed to prove the fact that the property has been purchased from joint family income and and property is a joint family property much less property is not a Hindu undivided family property.

10. It remains to be stated that, in view of the admission by the P.W.1, (the petitioner herein) in his cross examination as admitted that they are shown as Christian in Exhibits R1 and R2. The answer elicited in the cross examination of P.W.1, P.W.2, P.W.3 that all the witnesses have stated that there is no iota of evidence or any no document to show that the property is a joint family property.

11. It remains to be stated that as per Exs.R1 and R2, the vendor of the respondents 1 and 2 have exercised act to ownership by mortgaging the property which is duly admitted by the petitioner himself in the cross-examination as P.W.1 and also the religion that they

belonged to Christian has also been admitted and hence, the order passed by the Trial Court that the petitioner though raised a plea that the property in question is a Hindu undivided family property is not proved in the manner known to law does not suffer from any irregularity or illegality warranting interference.

12. The learned counsel for the petitioner also stated that R.C.O.P was filed in respect of the portion of the property and exparte decree was obtained.

13. It remains to be stated that if the petitioner is in the possession of the property. He ought to have filed a document to show his possession before the Trial Court but he has miserly failed to do so.

14. It remains to be stated that by a sale deed dated 03.06.2009 the respondent herein, Decree Holder has purchased the property from the mother of the petitioner herein. R.C.O.P was filed in R.C.O.P.6/14 and R.C.O.P.No.7/14 another portion of 6/14 the petition premises. Execution petition is filed in the year 2008 and hence, I do not find any merits in the contention raised by the petitioner.

15. Accordingly, the order passed by the Execution Court does not suffer from any illegality or irregularity and both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.11.2020

Internet : Yes
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To

The District Munsif Dharapuram.

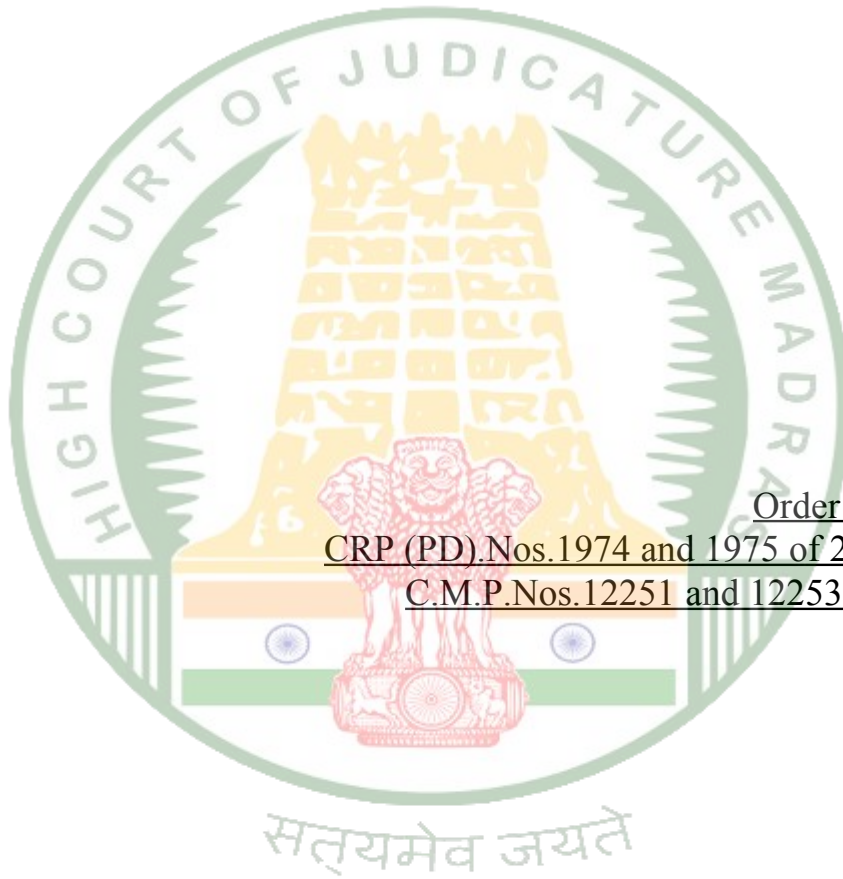


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RMT.TEEKAA RAMAN, J.

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