

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4190 of 2014

Gopal

... Petitioner

Versus

Jaganathan

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Judgment and decree dated 20.06.2014 made in E.A.No.11 of 2013 in V.E.P.No.291 of 2000 in G.O.S.No.742 of 1992, on the file of District Munsif Court, Katapadi, Vellore District.

For petitioner : A.Gouthaman

For Respondent : Mr.M.Sathishkumar

ORDER

The Petitioner is the decree holder in O.S. No. 749 of 1992. The petitioner herein filed the suit in O.S.No.742 of 1992, on the file of District Munsif Court, Gudiyatham, for recovery of money due on promissory note. The said suit was decreed on 26.07.1993, thereafter, on change of jurisdiction, the Execution petition was filed in E.P. No. 291 of 2000 before

the District Munsif Court, Katpadi, in which, petitioner filed an application seeking permission of the Court to proceed with the auction sale and after obtaining necessary permission, he proceeded with the Court auction, took delivery of possession of the property through Court.

2. After few years, the very same Judgment Debtor namely the respondent, without any authority of law, trespassed into the property and dispossessed the petitioner, who is also decree holder. Hence, he filed EA.No.11 of 2013 for re-delivery of the possession through Court. The said application was rejected by the Execution Court on the ground that second execution petition is not permissible and he has to file a separate suit and hence, the Civil Revision Petition.

3. On behalf of the respondent, reliance was placed upon the decisions rendered by this Court in the case of **R.Radha Vs. B.Saraswathy** is reported in **2005 (2) CTC 272** and in the case of **Kanakamma Vs. Kamalan** is reported in **2000 (II) CTC 240**. It is no doubt true that the respondent herein is a Judgment Debtor. In the execution petition the delivery has already been effected and the petitioner had been put in possession of the schedule mentioned property by the process of Court in the execution proceedings. In the above referred decisions of this Court, when the Judgment Debtor trespassed into the very same suit property, it was held that the decree holder need not go to the

Court to file a separate suit, especially when the decree holder was put in possession by the process of Court. Hence, the finding rendered by the Trial Court is against the dictum of this Court in the above referred citations. In this view of the matter, the order passed in E.A.No.11 of 2013 is set aside and the Civil Revision Petition is allowed.

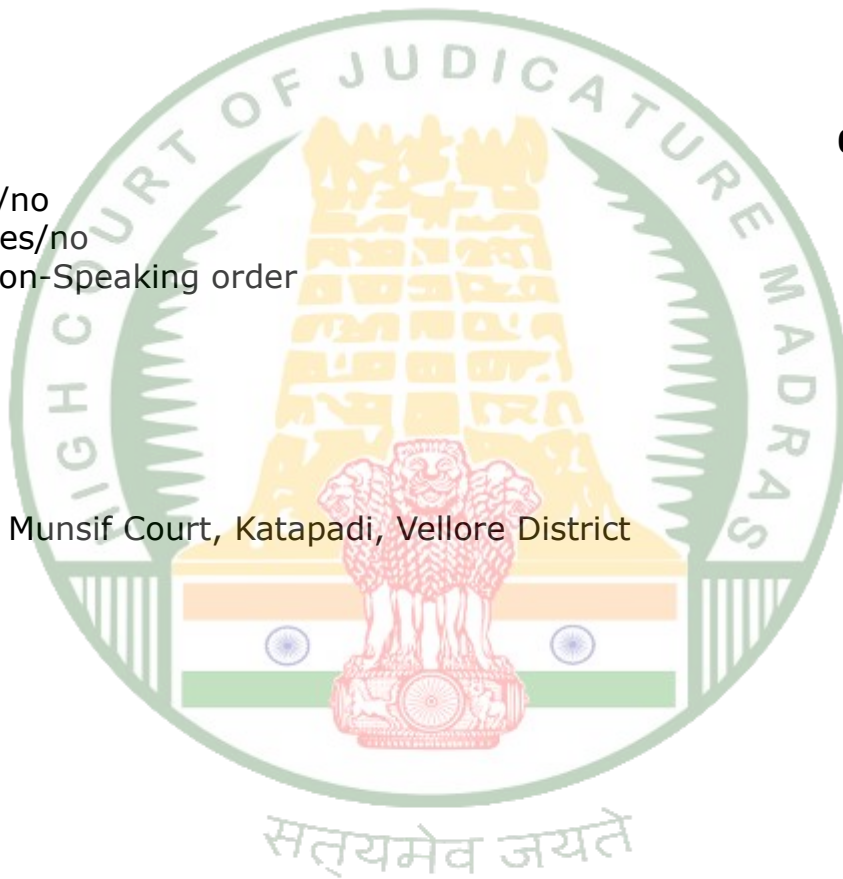
05.02.2020

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order

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To

The District Munsif Court, Katapadi, Vellore District



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CRP.(NPD).No.2104 of 2010

RMT.TEEKAA RAMAN,J.,

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CRP.(NPD).No.4190 of 2014

05.02.2020

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