

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20.01.2020

JUDGMENT PRONOUNCED ON : 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4832 of 2014
and
M.P.No.1 of 2014

1.Kumari
2.Kesavan

... Petitioners

...Versus...

Muniammal (Died)

1. Devaraj
2. Sarasa
3. Anjala
4. Vasantha
5. Sugirtha
6. Munusamy
7. Nirmala
8. Usha

... Respondents

PRAYER:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the order dated 17.10.2014 made in R.E.A.No.58 of 2012 in E.P.No.101 of 2009 on the file of Subordinate Court, Krishnagiri.

For Petitioners	::	Mr.M.A.Gouthaman
For R1	::	Mr.V.Nicholas
For R2 to R8	::	No appearance

J U D G M E N T

The legal representatives of the deceased Judgment Debtor are the Revision Petitioners.

2. The first respondent-Muniammal (since deceased), who is the original defendant in the suit filed a suit in O.S.No.256 of 1994 for Specific Performance of the suit sale agreement namely the deed of re-conveyance on 12.08.1999 and in the suit, an ex-parte decree was passed on 06.10.1999. After filing the Execution Petition, the said Muniammal died. Thereafter, to bring the legal heirs on record an application was filed in I.A.No.459 of 2007 and the same was allowed on 18.03.2008.

3. Thereafter, E.P.No.101 of 2009 was filed for execution of the sale deed and the said E.P was allowed on 03.01.2012 whereby, the Court has executed the sale deed in their favour. Subsequently, the parties have filed R.E.A.No.58 of 2012 seeking delivery of possession of the property in which the present petitioners being the legal heirs of the deceased Muniammal, have filed the petition. They have filed a counter stating that the date of the decree mentioned in the Execution Proceedings is erroneous and consequently, entire proceedings stand vitiated.

4. On perusal of the typed set of papers, it is seen that the date of the decree was amended vide order dated 10.07.2014 made in R.E.A.No.43 of 2014.

5. Admittedly, the original owner namely Muniammal though has filed a written statement in the suit, she has not chosen to contest the case, which resulted in passing of ex-parte decree in the suit on 06.10.1989. Execution Proceedings was filed. E.A. for delivery was also filed and L.R application to bring the legal representatives of the deceased Judgment Debtor was also allowed and it is also seen from the typed set of papers that the date of the judgment is also amended as per the orders dated 10.07.2014 in R.E.A.No.43 of 2014.

6. Suit is of the year 1994 and ex-parte decree is of the year 1999, the delivery petition was ordered on 17.10.2014.

7. At risk of repetition however for the sake of clarity, as stated supra, as the Muniammal has not contested the suit. After filing the written statement, ex-parte decree was passed on 06.10.1999 in O.S.No.256 of 1994.

8. After the death of Judgment Debtor, the present Revision Petitioner and his sisters are impleaded as a party as per orders in I.A.No.457 of 2006 and they are also made as a party in R.E.P.No.101 of 2009 which is filed for execution of the sale deed. In the said E.P also except this petitioner all other 7 legal heirs of Muniammal were set ex-parte and though this revision petitioner appeared in R.E.P.No.101 of 2009 however not chosen to file his counter from 07.10.2009 upto 30.09.2011 as could be seen from the docket orders of the lower Court and hence, on that day he was set ex-parte.

9. As the sale deed was ordered to be executed in favour of the respondent/petitioner as he had not executed the sale deed. The sale deed was executed by the Court and registered on 03.01.2012. Consequently, E.P was closed on 22.02.2012 and thus, from the docket entries in the Execution Proceedings, this Court also finds that the date of the decree has been duly amended pursuant to the order passed in R.E.A.No.43 of 2014 and thus, this Court finds that the petitioners are sleeping all along and not contesting the case. The suit was ex-parte decree and thus, the petitioners are brought on record ex-parte and R.E.P notice were served and the petitioner filed vakalath and not contested the case by not filing the counter, subsequent applications filed for execution

of the sale deed, he was served but not filed the counter. Consequently, he was set ex-parte and the date of the decree was also amended. Taking into consideration that the petitioners are not the diligent enough to contest the case at any stage of the proceedings has filed this application to drag on the delivery of the property and hence, I do not find any contention in favour of the petitioner.

10. In view of the fact that amendment in the date of the decree has been duly ordered, I do not find any error in the order passed by the Trial Court and it appears that it is only a petition to bring on the Execution Proceedings after the death of the judgment/debtor.

11. In this view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P is closed.

सत्यमेव जयते

23.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

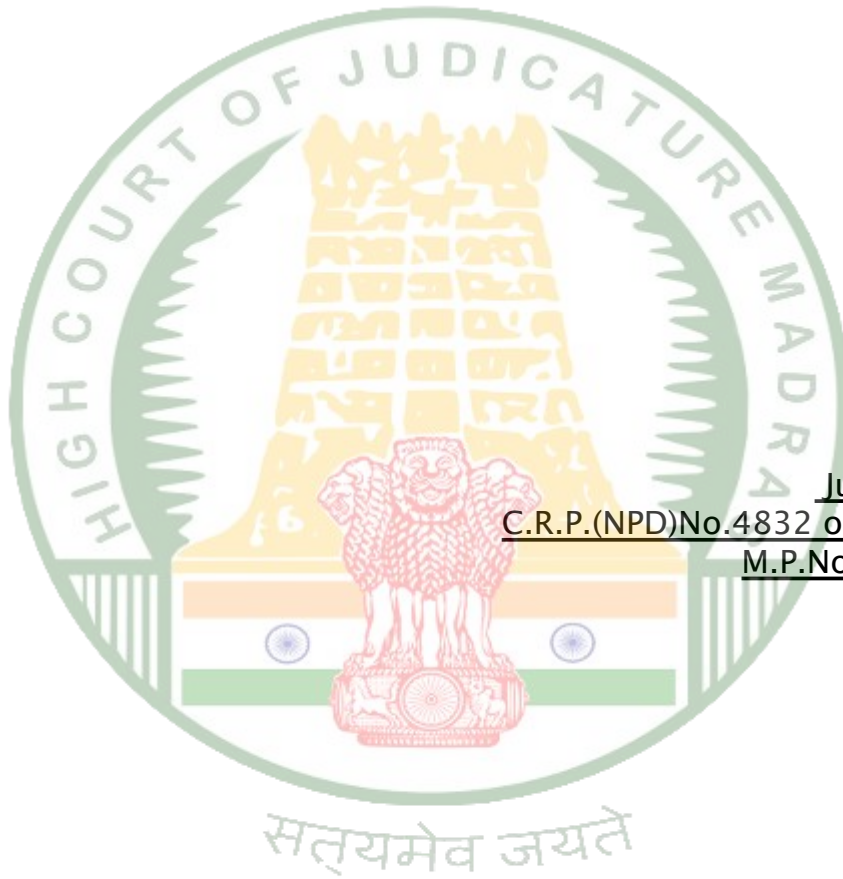
The Subordinate Court, Krishnagiri.

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RMT.TEEKAA RAMAN,J.,

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Judgment in
C.R.P.(NPD)No.4832 of 2014 and
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