

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.136 of 2021
and C.M.P. No.1289 of 2021

S.M.Chinnusamy

...

Petitioner /
1st Defendant

versus

1.N.V.Arthanari

...

Respondent /
Plaintiff

2.Krishnaveni

3.Balan

4.Sumathy

5.Revathy

...

Respondents /
Defendants 2 to 5

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order and decreetal order in R.E.A.No.2 of 2019 in R.E.P.No.4 of 2016 in O.S.No.56 of 2008 on the file of the Sub Court, Rasipuram dated 23.01.2020.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent No.1 : Mr.M.Vijayan

ORDER

This Civil Revision Petition is filed to set aside the order dated 23.01.2020 passed in R.E.A.No.2 of 2019 in R.E.P.No.4 of 2016 in O.S.No.56 of 2008 on the file of the Sub Court, Rasipuram.

2. O.S.No.56 of 2008 was filed by the first respondent against the petitioner and other respondents for the relief of specific performance of contract on the basis of the Sale Agreement dated 02.09.2001. There was also alternative prayer for refund of advance amount. It was contested by the petitioner and the respondents 2 to 5. After contest, the learned trial Judge, dismissed the relief of specific performance for the reason that, the first defendant was not having any title over the suit property. However, the alternative relief for refund of Rs.4,50,000/- to the first respondent with interest, was ordered.

3. Subsequently, the first respondent filed R.E.P.No.4 of 2016 for attachment and sale of properties for realising the decree amount. In the Execution Petition, the same properties, which had been shown as the suit properties in the main suit were shown for attachment and sale. When it

was pointed out that the petitioner Chinnusamy was not the owner of these properties, the first respondent filed R.E.A.No.2 of 2019 for amending the Execution Petition by including a new property. This petition was objected by the petitioner and the respondents 2 to 5. The learned trial Judge has considered the rival submissions and allowed the petition. Against the said order, the present Civil Revision Petition is preferred.

4. The learned counsel for the petitioner submitted that the property, which is now sought to be included by way of amendment was sold on 12.04.2011 to N.Kuppusamy by the petitioner. The petitioner is no longer the owner of the property, when this amendment petition was filed. When he is no longer the owner of the property, the property cannot be included in the Execution Petition for attachment and sale. Therefore, the learned counsel prayed for setting aside the order of the learned trial Judge and allowing this Civil Revision Petition.

5. In response, the learned counsel for the first respondent submitted that the property, which is now sought to be included by way of amendment was the property of the petitioner. This property was allotted to

him in a partition as D-schedule in O.S.No.10 of 1996 on 06.03.1996. When O.S.No.56 of 2008 was pending, it appears that the petitioner sold the property to N.Kuppusamy. N.Kuppusamy is also now impleaded as one of the respondents in the Execution Petition. Therefore, the learned counsel for the first respondent submitted that the trial Court has rightly allowed the petition for including the property by way of amendment. He prays for confirming the order of the learned trial Judge and dismissal of this Civil Revision Petition.

6. Considered the rival submissions.

7. Admittedly, the petitioner is not the owner of the property concerned in O.S.No.56 of 2008 and that was the reason why, the relief of specific performance, was denied. The property now sought to be included by way of amendment in the Execution Petition, is not a property in O.S.No.56 of 2008. Therefore, the sale in favour of N.Kuppusamy cannot be considered as a sale during the pendency of the litigation. The suit in O.S.No.56 of 2008 was dismissed only on 04.03.2013, but the sale in respect of the property now sought to be included had taken place on 12.04.2011, that is, prior to the judgment in O.S.No.56 of 2008. There is no prohibitory order like attachment before judgment or any injunction

restraining the alternation of the property secured prior to the sale in favour of N.Kuppusamy on 12.04.2011.

8. When the petitioner is not the owner of the property on the date of filing the amendment petition, he cannot seek the prayer to include that the property by way of amendment. However, without considering these aspects, the learned trial Judge, has allowed the petition, which is not correct. Therefore, the order passed by the learned Subordinate Judge, Rasipuram, in R.E.A.No.2 of 2019 in R.E.P.No.4 of 2016 in O.S.No.56 of 2008 dated 23.01.2020, is hereby set aside and this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

25.08.2021

Speaking order / Non-speaking order

Index : Yes / No

sri

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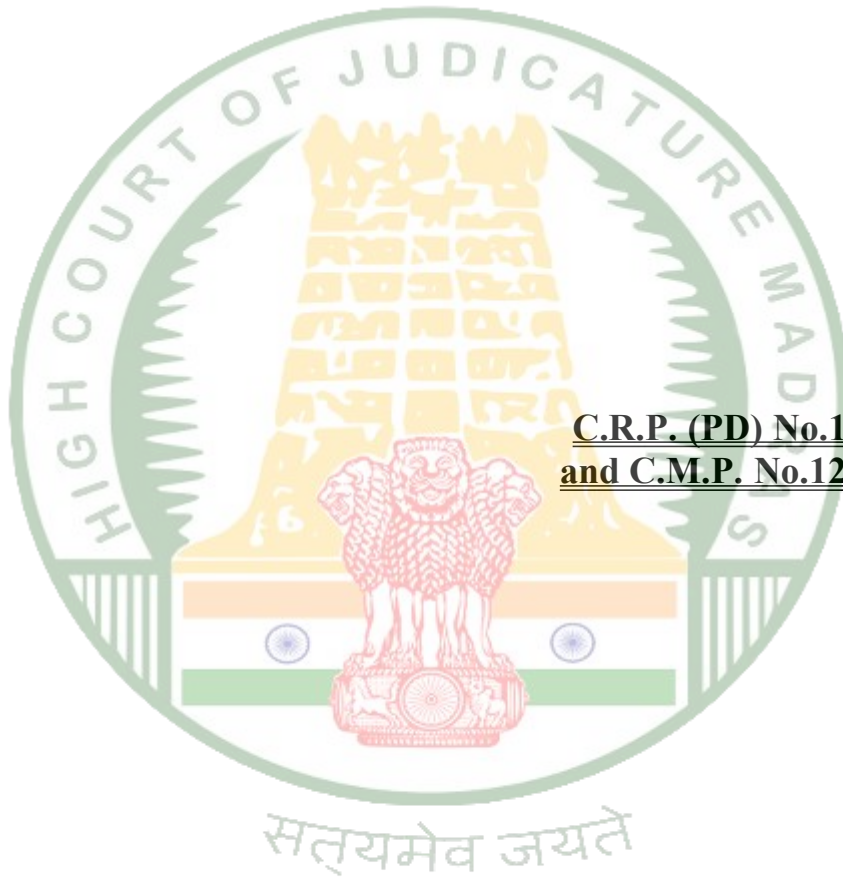
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G.CHANDRASEKHARAN, J.

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To

The Subordinate Judge, Rasipuram.



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