

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM :

THE HON'BLE MR.JUSTICE **C.V. KARTHIKEYAN**

C.R.P.(NPD) No.179 of 2021

1.K.K.Loganathan

2.Arunprasanth

3.Akil Prasath

... Petitioners

Vs.

M.C.Thanga Muthu

... Respondent

Prayer: Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 15.12.2020 in E.P.No.24 of 2009 in O.S.No.128 of 2021 on the file of the Subordinate Judge, Bhavani.

For Petitioners : Mr.R.Sunil Kumar

For Respondents : Mr.V.Anandhamoorthy

O R D E R

There is absolutely no bona fide on the part of the revision petitioners. They appear to play fraud not only on the respondent/plaintiff but also on the court, by filing a memo and applications indicating that they would settle the decretal amount but at the same time going back on their very words.

2. Short facts are that O.S.No.128 of 2001 had been filed by the respondent herein against the revision petitioners, seeking recovery of a sum of Rs.2,00,000/- together with interest. It is now two decades since the institution of the suit. Though a decree had been passed on 30.03.2007, the revision petitioners have not paid any amount voluntarily except when the Court nudged them to pay some amount. In the earlier round of litigation in C.R.P.No.2996 of 2012, a sum of Rs.50,000/- had been paid and in the present Revision petition as a condition for stay, a sum of Rs.1,00,000/- had been paid. The revision petitioners have otherwise not paid any amount. Naturally, after the decree, the property of the petitioners was

brought to sale. This was taken advantage of by the revision petitioners on the ground that the value of the property is substantially more than the value of the decretal amount. Raising this as a ground, they filed C.R.P.No.2996 of 2012, which was adjudicated on 21.02.2017. While passing the order, the revision petitions themselves had filed a memo that they would pay a sum of Rs.40,000/- every month towards the decree amount and that the property should be protected. Trusting and believing their words, a learned Single Judge of this Court had accordingly allowed the revision petition and set aside the auction, but rather gave a direction to the revision petitioners to pay a sum of Rs.40,000/- every month as undertaken by them. Again, that undertaking was not kept up and was obviously an act of fraud on the court. They did not pay a single penny towards such undertaking. Left with no other alternative, the Trial Court namely the Sub Court at Bavani in Erode District, had brought the property for sale. Again, raising the same ground that a property valued at

substantially more amount is being brought to sale for a decretal amount which is quite less, the present Revision Petition has been filed.

3. Merely because the property is estimated at a higher value, the petitioners cannot take advantage of the provision of law and hide behind the provisions and defeat the rights of a decree holder for more than two decades. The revision petitioners herein should pay up the amount if they want to protect the property. They do not pay the amount but at the same time protect the property from being brought to auction, contending that the value of the property is substantially more than the value of the decretal amount.

4. A direction is therefore issued to the Sub Court at Bavani to appoint a Commissioner, along with a court official/bailiff, to inspect the property and explore the possibility as to whether the property is divisible and a portion thereof

could be brought for sale towards satisfying the decretal amount. A smaller portion, if it could satisfy the decretal amount could be sub divided, marked out and then auction notice can be issued.

5. By this direction though the auction notice for the entire property is set aside, liberty is given to the respondent herein to apply to the court to sub divide the property to the value of the decretal amount and also seek appointment of an Advocate Commissioner and also seek the assistance of a court bailiff to subdivide the property which portion should be to the value of decretal amount, and bring it up for sale in the manner known to law.

6. In the result, the Revision Petition is dismissed. No costs.

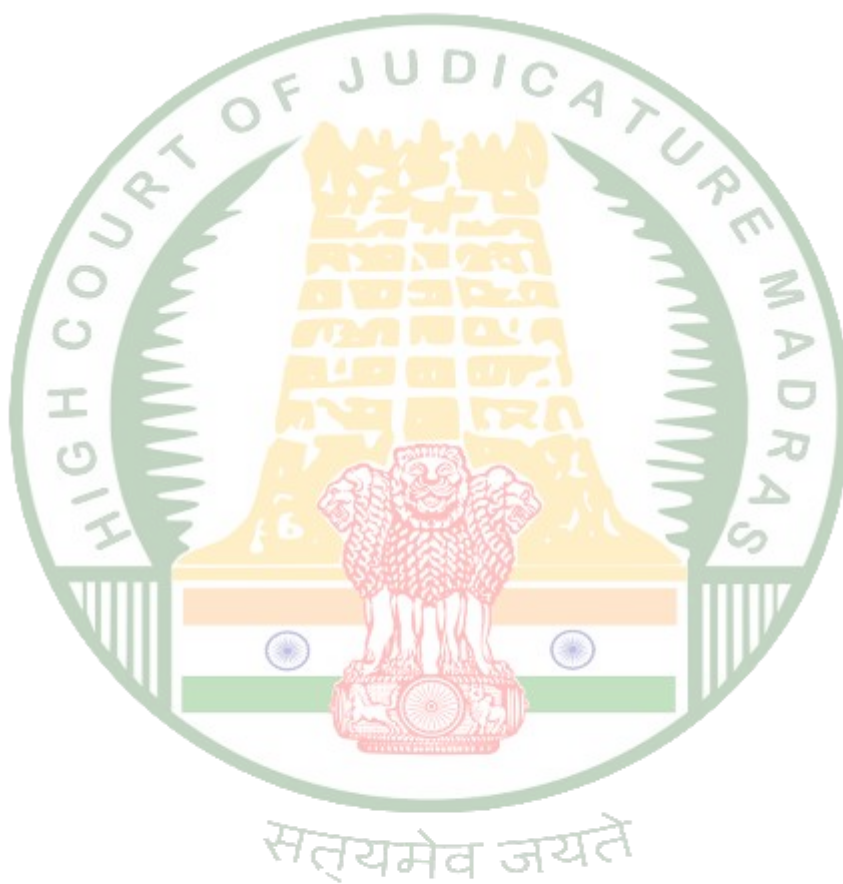
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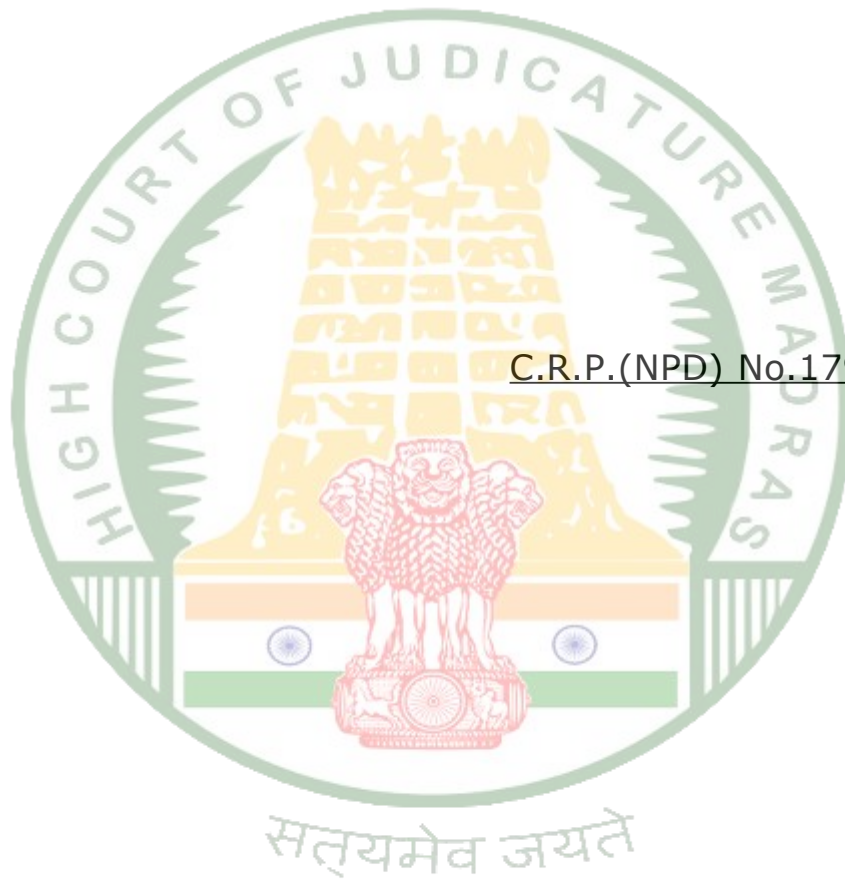
1. The Subordinate Judge, Bhavani.



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C.V. KARTHIKEYAN, J.

(mrn)



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