

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) Nos.359 of 2012 & 1027 of 2014
and M.P.Nos.1 of 2012 & 1 of 2014

Rev.Dr.S.Jayaraj Krishnan Petitioner in
both C.R.Ps.

Vs.

1. M/s.Mahalakshmi Cotton Company,
A Regd. Firm rep. by its Partner
A.Subramaniam,
S/o.Balasubbaier
Nandyal Karnool District,
Andhra Pradesh State

2. M/s.Thanigai Spinners,
A Regd Firm rep. by its partner
S.A.Shanmugasundaram
No.112, T.V.K.Road,
Ammamet, Salem - 636 003.

3. S.A.Shanmugasundaram
4. Visalakshimi
5. S.Thankarasu

... Respondents in
both C.R.Ps.

Prayer in C.R.P.No.359 of 2012:- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order and decretal order dated 27.09.2011 in I.A.No.58 of 2009 in unnumbered C.M.A. on the file of the learned Principal District Judge, Salem.

Prayer in C.R.P.No.1027 of 2014:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 18.12.2013 passed in R.E.A.No.316 of 2013 in R.E.P.No.44 of 2000 in O.S.No.11 of 1994 on the file of the learned I Additional Sub Judge, Salem.

For Petitioner
in both C.R.Ps. : Mr.M.Thamizhavel
For Respondents
in both C.R.Ps.
For R1 : Mr.S.Rajasekar
for Ms.R.Hemalatha
R2 to R5 : Dismissed vide Court
order dated 28.08.2020

COMMON ORDER

The revision petition in C.R.P.No.359 of 2012 is directed as against the order 27.09.2011 passed by the learned Principal District Judge, Salem, in I.A.No.58 of 2009 in unnumbered C.M.A. on the file of the, thereby dismissing the application by the petitioner to condone the delay in filing the appeal.

2. The revision petition in C.R.P.No.1027 of 2014 is directed as against the order dated 18.12.2013 passed by the learned I Additional Sub Judge, Salem, in R.E.A.No.316 of 2013 in R.E.P.No.44 of 2000 in O.S.No.11 of 1994, thereby dismissing the application filed by the petitioner to stay further proceeding in REA.No.596 of 2006 dated 25.06.2008, till disposal of C.R.P.No.359 of 2015 filed before this Court.

3. The learned counsel appearing for the petitioner would submit that the petitioner filed a petition in R.E.A.No.596 of 2006 challenging the auction sale in execution proceedings initiated by the first respondent herein in pursuant to the decree obtained in O.S.No.11 of 1994 on the file of the Civil Court at Andhra Pradesh. The said decree was transmitted to the file of the I Additional Sub Court, Salem for executing the same in R.E.P.No.44 of 2000. According to the petitioner, he purchased the first item of the suit schedule mentioned property from one Jamuna Rani by the sale deed dated 30.03.2005 for valid sale consideration. In fact, after verifying the encumbrance certificate he purchased the same and after purchase, the revenue records were mutated in his name.

4. He further submitted that only after seeing the auction notice, the petitioner came to the knowledge that the property which was purchased by him was under auction, in pursuant to the civil Court decree obtained by the first respondent herein. Therefore he filed a petition in R.E.A.No.596 of 2006 and after elaborate discussions, the said petition was dismissed. Aggrieved by the same, the petitioner filed an appeal along with the condone delay petition with the delay of 169 days in filing the appeal. The reason stated for the delay is that the counsel for the petitioner applied for petition and order in R.E.A.No.596 of 2006 instead of fair and decreetal order in R.E.A.No.596 of 2006. Therefore, there was a delay of 169 days in filing the appeal. Hence, he prayed to allow both the revision petitions.

5. The learned counsel appearing for the first respondent contended that the purchase of the said property by the petitioner's vendor itself is not a bonafide one. Only to escape from the clutches of law, the sale deed executed in favour of the petitioner and it was categorically discussed by the Court below while dismissing the application filed by the petitioner herein. Further after obtaining the decree by the first respondent herein,

even till today he is not able to see the colour of the coin. Wantonly, the petitioner only to drag the proceeding, filed the appeal with the delay of 169 days. Therefore, the appellate Court dismissed the petition to condone the delay of 169 days for the reasons that the petitioner did not state any sufficient cause for the delay. Further the petitioner also failed to explain the reason for each and every day for the delay in filing the appeal. Therefore, he prayed for dismissal of both the petitions.

6. On perusal of records, it is seen that the petitioner instead of filing appeal as against the order passed in R.E.A.No.596 of 2006, preferred CMA that too with the condone delay petition. Aggrieved by the dismissal order, the petitioner preferred the revision petition in C.R.P.No.359 of 2012. While pending the revision petition, the petitioner again filed R.E.A.No.316 of 2013 to stay all further proceedings till disposal of the above said revision petition in C.R.P.No.359 of 2012. That was also dismissed by the Court below for the reason that the petitioner failed to obtain any interim order from this Court to stay of R.E.A.No.44 of 2000. Aggrieved by the same, the petitioner filed another revision petition in C.R.P.No.1027 of

2014. In both orders, the trial Court rightly stated the reasons and dismissed the same. Therefore, this Court finds no illegality or infirmity in the orders passed by the Court below. Accordingly both the C.R.Ps. are liable to be dismissed.

7. Further the learned counsel appearing for the petitioner would submit that there are two properties in the execution proceeding, in which the first item of the property was purchased by the petitioner herein. In respect of the second item of the schedule mentioned property, the same is having more value than the amount claimed by the first respondent in the said execution proceeding.

8. Considering the above submission, the execution Court viz., the I Additional Subordinate Court, Salem is directed to consider the said submission while auctioning the properties.

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9. With the above directions, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

06.01.2021

Internet : Yes

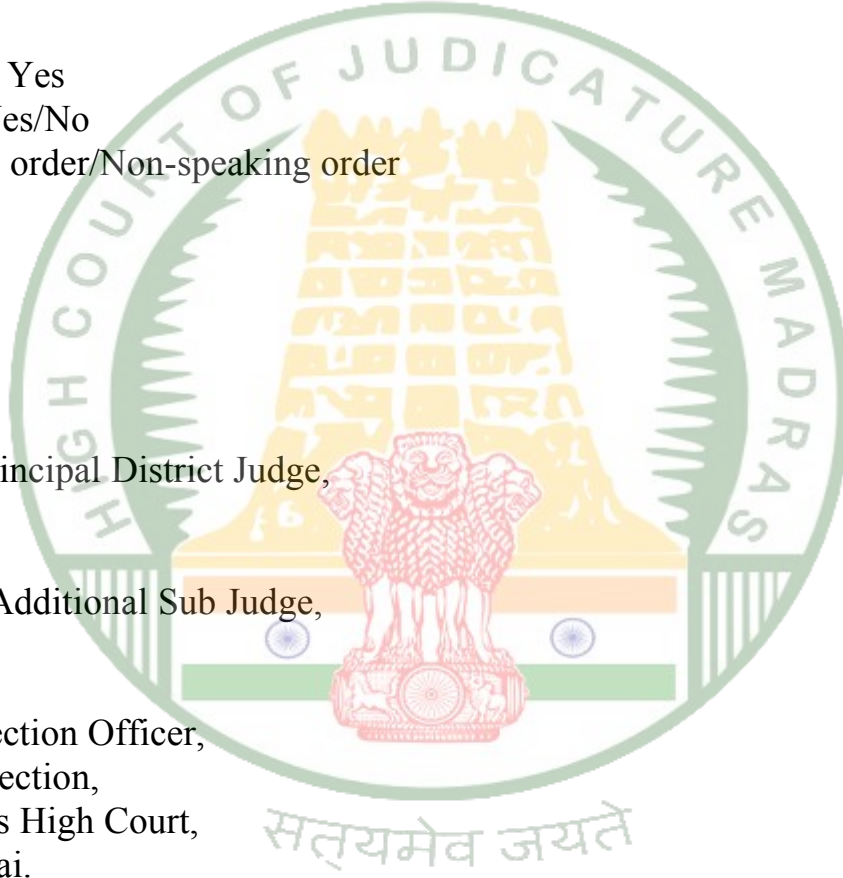
Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal District Judge,
Salem.
2. The I Additional Sub Judge,
Salem.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

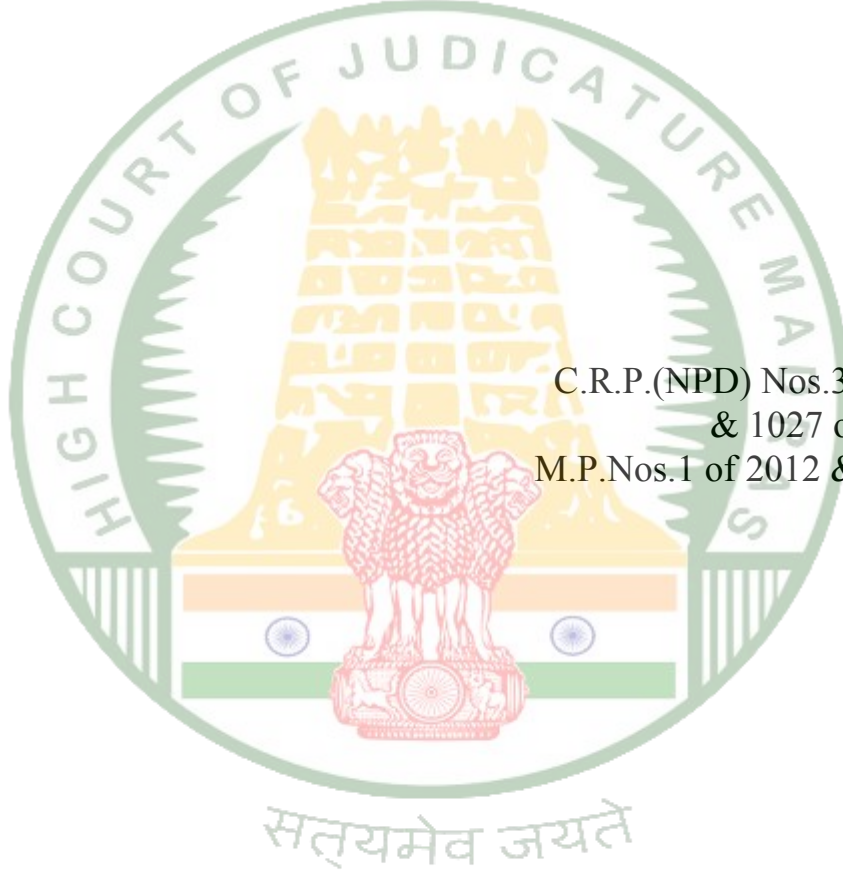


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G.K.ILANTHIRAIYAN, J.

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