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C.R.P. (NPD) .No.3239 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3239 of 2015

and

M.P.Nos.1 & 2 of 2015

A.Krishnamoorthy Chettiar

.. Petitioner

Vs.

1.Shivakozhunthu Chettiar

2.Jothi Ammal

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.03.2014 made in E.P.No.85 of 2010 in O.S.No.649 of 2005 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.K.Arumugathai
for M/s.P.Veena Suresh
For Respondents : Mr.R.Gururaj

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 20.03.2014 made in E.P.No.85 of 2010 in O.S.No.649 of 2005 on the



file of the Principal District Munsif Court, Cuddalore.

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2.The petitioner is the decree holder in O.S.No.649 of 2005 and petitioner in E.P.No.85 of 2010. The petitioner filed the said suit against the respondents for recovery of money. The said suit was decreed by the judgment and decree dated 28.09.2007. The petitioner filed E.P. for attachment of sale of the properties mentioned in the E.P. to realise the decretal amount stating that the said properties mentioned in the E.P. belongs to respondents. The 1st respondent is husband of 2nd respondent and the 1st respondent remained exparte. The 2nd respondent filed counter statement stating that properties mentioned in E.P. does not belong to the respondents and properties are not in possession of the 2nd respondent. Hence, attachment and sale of properties cannot be ordered. The 2nd respondent has also stated that the amounts claimed in the E.P. is not correct and the amount claimed is far and above the decretal amount and prayed for dismissal of E.P.

3.The learned Judge framed necessary points for consideration and held that petitioner has not produced any records to show that the petition mentioned properties belongs to 2nd respondent. In the absence of documents, the Court refused to give order in favour of petitioner and dismissed the E.P.



4. Against the said order of dismissal dated 20.03.2014 made in E.P.No.85 of 2010, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner referred to copy of the registered settlement deed dated 24.03.2009 executed by the 1st respondent in favour of the 2nd respondent and submitted that the 1st respondent deliberately, in order to defeat the interest of the petitioner, settled the property in favour of the 2nd respondent. Encumbrance certificate produced by the petitioner reflects the settlement executed by 1st respondent in favour of 2nd respondent. The learned Judge without properly considering the documents, dismissed the E.P. on technical ground and prayed for allowing the Civil Revision Petition.

6. The learned counsel appearing for the respondents submitted that the respondents are not owners of petition mentioned properties and the petition mentioned properties are not in possession of 2nd respondent. The learned Judge considering the fact that petitioner has not produced any document before the Execution Court to show that 2nd respondent is owner of the



petition mentioned property, dismissed the E.P. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

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7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

8. From the contention of the learned counsel appearing for the petitioner and copy of the registered settlement deed filed in the typed set of papers, it is seen that the petition mentioned properties originally belongs to 1st respondent, who by the registered settlement deed dated 24.03.2009 settled the properties in favour of 2nd respondent. According to the learned counsel appearing for petitioner, the encumbrance certificate filed by the petitioner in the E.P. proceedings clearly reveals that properties mentioned in E.P. belongs to 2nd respondent. The said contention has considerable force and is acceptable. In view of the same, the order of the learned Judge dismissing the E.P. is set aside. The learned Principal District Munsif Judge, Cuddalore, is directed to take E.P.No.85 of 2010 on file and pass orders on merits and in accordance with law after giving opportunity to the parties to put forth their case. It is open to the petitioner and respondents to let in oral and



documentary evidence, if they so desire and advised.

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9. With the above directions, the Civil Revision Petition is allowed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

01.12.2021

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Index : Yes / No

Internet : Yes / No

To

The learned Principal District Munsif Judge,
Cuddalore.



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V.M.VELUMANI, J.
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