

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.2296 of 2020

K.Sundararaj

.. Petitioner

Vs

K.Muthusamy

.. Respondent

Civil Revision Petition filed under Article 227 of Code of Civil Procedure against the docket order passed in E.P.No.28 of 2017 in O.S.No.31 of 2003 on the file of the Sub-Court, Kangeyam dated 20.02.2020.

For Petitioner

.. Mr.C.K.M.Appaji

For Respondent

.. Mr.S.Saravanan

ORDER

This Civil Revision Petition has been filed against the docket order passed in E.P.No.28 of 2017 in O.S.No.31 of 2003 on the file of the Sub-Court, Kangeyam dated 20.02.2020.

2.The above said suit was filed by the plaintiff/respondent herein

seeking specific performance of Agreement of Sale dated 28.07.2002. The revision petitioner herein, in his capacity as defendant, had filed a written statement, disputing the case of the plaintiff/respondent. Consequently, issues were framed based on the pleadings and the parties had also adduced evidence. They examined their respective witnesses. On behalf of the plaintiff, Exs.A1 to A8 were marked. On behalf of the defendant, Exs.B1 to B11 were marked. After completion of the trial, a final judgment was passed on 21.12.2009 and the suit was decreed directing the defendant to execute a sale deed in favour of the plaintiff in respect of the suit property on receipt of the balance sale consideration. Aggrieved by the judgment and decree of the trial Court, the appellant /defendant preferred an appeal in A.S.No.29 of 2012 before the Principal District Court, Tirupattur and by a judgment dated 28.02.2013, the appeal suit came to be dismissed and the judgment and decree of the trial Court dated 21.12.2009 was confirmed. Thereafter, the plaintiff filed an E.P.No.28 of 2017 and that had progressed considerably. In the meantime, the petitioner/defendant filed Second Appeal in S.A.No.1152 of 2013, wherein, while admitting the said Appeal, an interim order of stay was granted by this Court on 25.11.2013 and it was also extended subsequently.

3. I am informed that the order of stay is still in force. The learned trial Judge, however, proceeded with the execution petition. Questioning such proceeding with the execution petition by the Court below in spite of order of interim stay granted in S.A.No.1152 of 2013, the present Revision Petition has been filed.

4. As a matter of fact, it is admitted by both the learned counsel that there was an order of interim stay dated 25.11.2013 in S.A.No.1152 of 2013. The stay order has been extended and subsequently it was also made absolute and it is naturally binding on the file of the trial Court. It is only advisable that the learned Judge of the Court below does not proceed with the execution proceedings in E.P.No.28 of 2017. The present Revision Petition is filed questioning the act of the Executing Court in proceeding with the Execution Petition despite the interim stay granted by this Court. Therefore, E.P.No.28 of 2017 on the file of the Sub -Court, Tharapuram is terminated, however, with a liberty to the decree holder/plaintiff to revive the execution petition if at all the appeal in S.A No.1152 of 2013 is either dismissed or any further directions are given by the Court. Since the appeal in S.A. No.1152 of 2013 has been pending from the year 2013,

the parties are therefore, directed to advance their arguments and expedite the disposal of the Second Appeal.

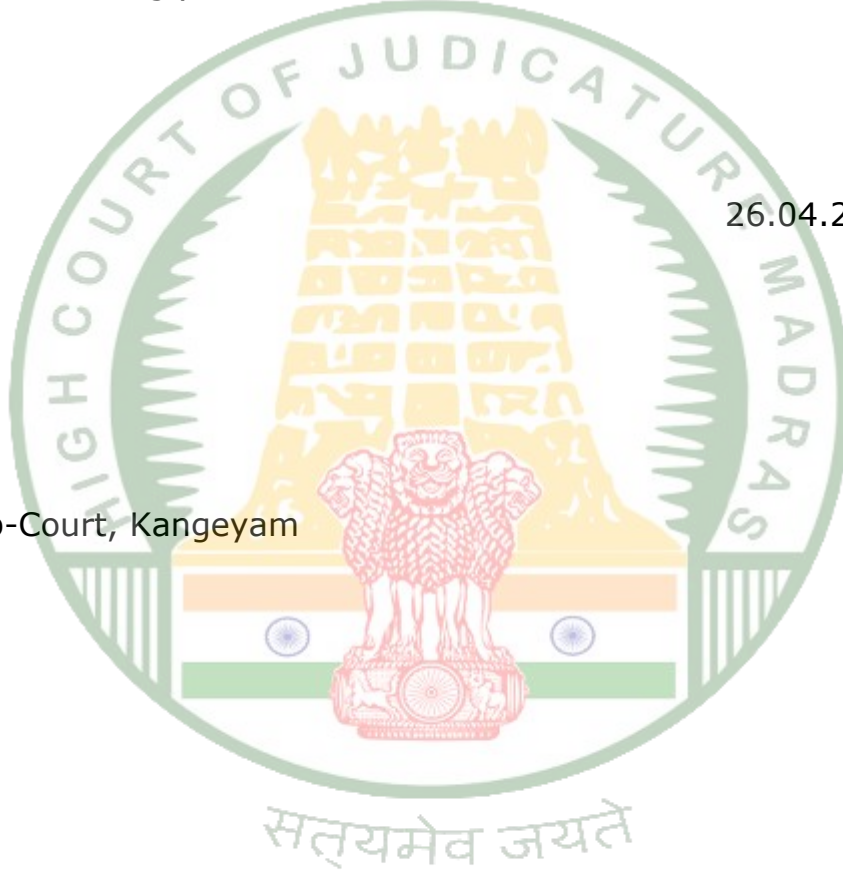
5. Accordingly, the Civil Revision Petition is allowed. No costs.

26.04.2021

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To

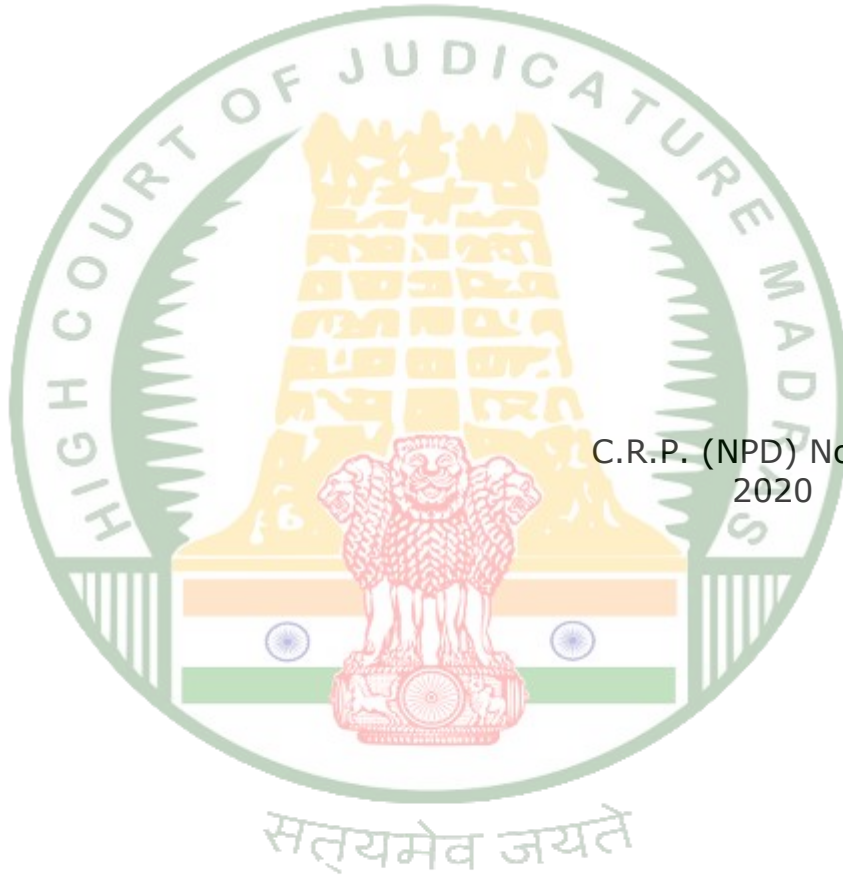
The Sub-Court, Kangeyam



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C.V.KARTHIKEYAN,J.

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