

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

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

CRP.NPD.Nos.1590 and 1591 of 2016

and

CMP.Nos.8626 and 8664 of 2016

CRP.NPD.No.1590 of 2016

1. K.K.Loganathan
2. Arun Prasad
3. Akil Prasad

..Petitioners

Vs.

N.Subramaniam

..Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket sheet order made in E.P.No.105 of 2008 in O.S.No.402 of 2005 on the file of the District Munsif Court at Bhavani dated 11.04.2016.

For Petitioners : Mr.R.Sunil Kumar

For Respondent : Mr.D.R.Arun Kumar

CRP.NPD.No.1591 of 2016

1. K.K.Loganathan
2. Arun Prasad
3. Akil Prasad

..Petitioners

Vs.

V.Venkatachalam

..Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket sheet order made in E.P.No.108 of 2008 in O.S.No.135 of 2004 on the file of the District Munsif Court at Bhavani dated 11.04.2016.

For Petitioners : Mr.R.Sunil Kumar

For Respondent : Mr.D.R.Arun Kumar

COMMON ORDER

These Civil Revision Petitions are directed as against docket sheet orders passed in E.P.Nos. 105 and 108 of 2008 in O.S.No.402 of 2015 and O.S.No.135 of 2004 dated 11.04.2016 on the file of the District Munsif Court at Bhavani.

2. In both the Civil Revision Petitions, the petitioners are judgement debtor/defendants. The respondent filed the said suits for recovery of money and in O.S.No.402 of 2005 and O.S.No.135 of 2004 and both the suits were decreed in favour of the respondents herein. For execution of both the decrees for recovery of money, the respondents filed an execution petition in E.P.No.105 of 2008 in respect of O.S.No.402 of 200 and filed an

execution petition in E.P.No.108 of 2008 in respect of O.S.No.135 of 2004. Both the execution petitions were ordered for proclamation of sale, in respect of the property comprised in Survey No.253/2001 ad-measuring 0.56.5 heaters. In both the suits, the decree amount would come around Rs.3,00,000/-. The property value has been fixed at Rs.16,00,000/- by the Court below. The said order of proclamation for sale is challenged in the present Civil Revision Petitions.

3. The learned counsel for the petitioner raised a ground that when the property values more than the decree amount, the part or portion of the property only has to be auctioned to realize the decree amount. He also pointed out that under Order 21 Rule 64 of the Civil Procedure Code, only such portion of the property which would satisfy the decree amount could be sold. It is relevant to extract the provisions under Order 21 Rule 64 of the Civil Procedure Code as below:-

“64. Power to order property attached to be sold and proceeds to be paid to person entitled.—Any Court executing a decree may order that any property attached by it and liable to

sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

4. In support of his contentions, the learned counsel for the petitioner also relied upon a judgment reported in (2007) 2 MLJ 901 (**T.Govindarajan -vs-T.Soundarajan**), in which, this Court held as follows:-

“11. Under Or.21 R.64 CPC, only such portion of the property as would satisfy the Decree amount should be sold. Or.21 R.64 CPC reads as follows :-

"64.Power to Order property attached to be sold and proceeds to be paid to person entitled – Any Court executing a Decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the Decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the

Decree to receive the same."

Use of the words "necessary to satisfy the Decree" clearly indicates that only such portion of the property necessary to satisfy the Decree could be sold.

12. Holding that sale made in violation of the mandatory requirement of Or.21 R.64 CPC would be illegal and without jurisdiction, in 2006 (3) SCC 49 [Balakrishnan Vs. Malaiyandi Konar], the Supreme Court has held as follows :-

"9. The provision contains some significant words. They are "necessary to satisfy the Decree". Use of the said expression clearly indicates the legislative intent that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation [see Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma, 1977 (3) SCC 337]. In all execution proceedings, the Court has to first decide whether it is necessary to bring the entire property to sale or such portion thereof as may seem necessary to satisfy the Decree. If the property is large

and the Decree to be satisfied is small the Court must bring only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the Decree-Holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion but an obligation imposed on the Court. The sale held without examining this aspect and not in conformity with these mandatory requirement would be illegal and without jurisdiction [see Ambati Narasayya vs. M.Subba Rao 1989 Supp (2) SCC 693]. The duty cast upon the Court to sell only such property or portion thereof as is necessary to satisfy the Decree is a mandate of the legislature which cannot be ignored. Similar view has been expressed in S.Mariappa Vs. Siddappa 2005 (10) SCC 235.

10. In S.S.Dayananda Vs. K.S.Nagesh Rao (1997 (4) SCC 451) it was held that the procedural compliance with

Order 21 Rule 64 of the Code is a mandatory requirement.

This was also the view expressed in Desh Bandhu gupta

Vs. N.L.Anand (1994) (1) SCC 131."

5. In the case on hand, admittedly, the Court below fixed the value of the said property at Rs.16,00,000/-. Admittedly, the decree amount comes around Rs.3,00,000/- in both the execution petitions. As pointed out by this Court, only such portion of the property that is necessary to satisfy the decree could be sold. Therefore, the above judgment is squarely applicable to the case on hand.

6. In view of the above discussion, these Civil Revision Petitions are allowed and the docket orders passed in E.P.Nos. 105 and 108 of 2008 in O.S.No.402 of 2015 and O.S.No.135 of 2004 dated 11.04.2016 are set aside. The Execution Court viz., the District Munsif Court is directed to follow the mandatory requirements under Order 21 Rule 64 of the Civil Procedure Code and order for proclamation of sale in respect of the part or portion of the property comprised in Survey No.253/1 ad-measuring 0.56.5 hectores situated at Nagalur Village, Bhavani Taluk to realise the decree

amount in both the execution proceedings and complete the entire proceedings within a period of two months from the date of receipt of a copy of this order, after giving opportunity of hearing to the judgement debtor, so as to identify the portion or part of the said property or for payment of the decree amount. Consequently, the connected Miscellaneous Petitions are closed. No costs.

25.01.2021

Speaking/Non-speaking order

Internet : Yes/No

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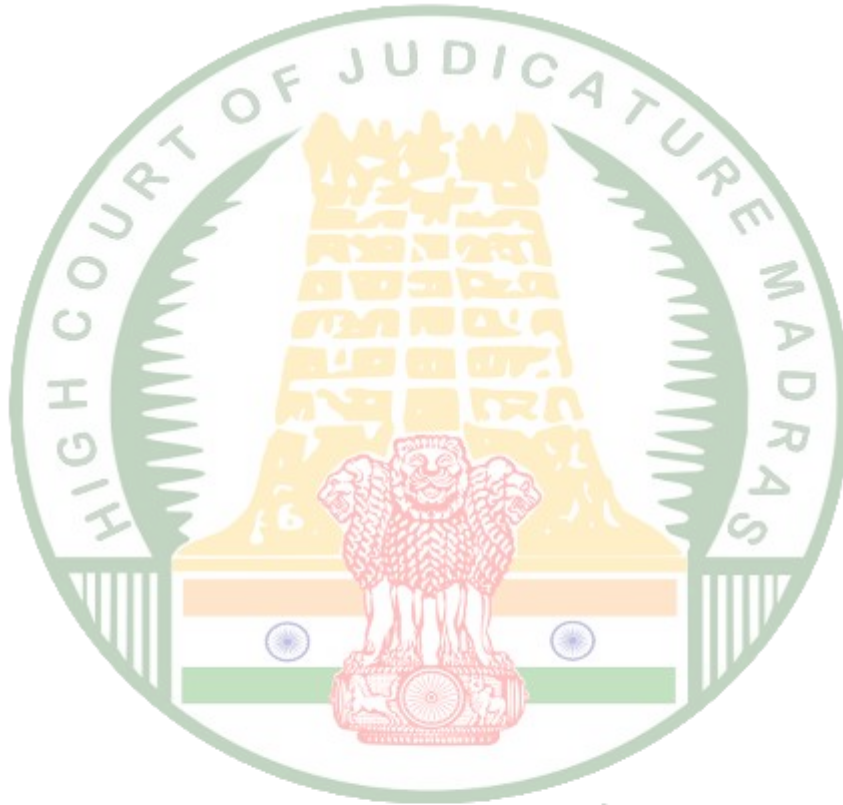
The District Munsif Court, Bhavani.



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G.K.ILANTHIRAIYAN,J.

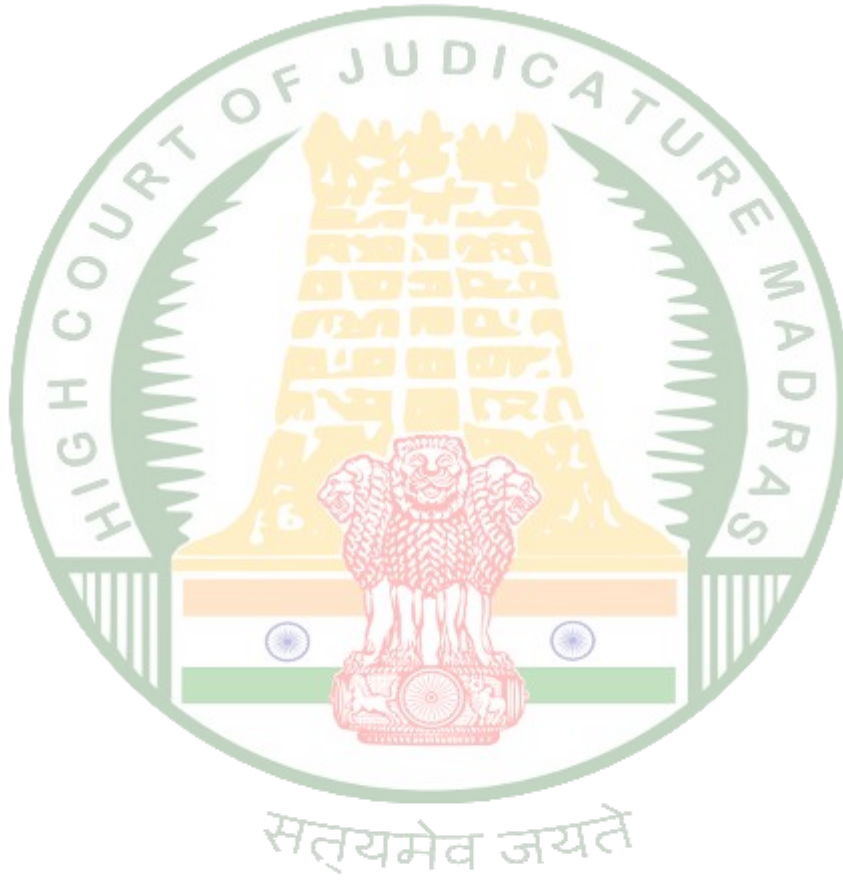
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