

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D) No.1968 of 2016
and C.M.P.No.10353 of 2016

Nadu Gounder @ S.R.Muthusamy

...Petitioner

Vs

Chinnasamy

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the judgment and decree dated 13.10.2015 passed in C.M.A.No.15 of 2015 on the file of II Additional District Judge, Erode confirming the fair and final order dated 15.04.2015 passed in I.A.No.659 of 2014 in O.S.No.130 of 2014 on the file of subordinate court, Perundurai.

For Petitioner : Mr.S.Kaithamalai kumaran

For Respondent : Mr.K.Kannan

ORDER

(The case has been heard through video conference)

This Civil Revision Petition has been filed seeking to set aside the judgment and decree dated 13.10.2015 passed in C.M.A.No.15 of 2015 on the file of the II Additional District Judge, Erode confirming the fair and final order dated 15.04.2015 passed in I.A.No.659 of 2014 in O.S.No.130 of 2014 on the file of the Subordinate court, Perundurai.

2.The petitioner is the defendant in the suit in O.S.No.130 of 2014 on the file of the Subordinate Court, Perundurai. The respondent is the plaintiff. The plaintiff filed the suit against defendant for recovery of amount of Rs.4,00,000/- with 12% interest, based on a promissory note dated 16.12.2012 executed by the defendant along with the suit. He also filed an application in I.A.No.659 of 2014 with a prayer for attachment of the suit property before judgement on his failure to furnish security for the suit claim. It was contested by the defendant, after enquiry, the defendant is directed to offer security to the suit claim on or before 20.04.2015, failing

which ordered to attach the property and also directed not to alienate the petition mentioned property. Aggrieved by this order, the defendant filed C.M.A.No.15 of 2015 before the IInd Additional District court, Erode. The Civil Miscellaneous Appeal was also confirmed the order of the trial Court and dismissed the C.M.A.No.15 of 2015. Aggrieved by this order, the defendant filed the present Revision Petition.

3.Heard Mr.S.Kithamalai kumaran, learned counsel for the petitioner and Mr.K.Kannan learned counsel for the respondent and perused the materials available on record.

4.Admittedly, the case is that the plaintiff/Chinnasamy filed a suit in O.S.No.130 of 2014 against the defendant for recovery of amount Rs.4,00,000/- with 12% interest based on a promissory note executed by the defendant. The application in I.A.No.659 of 2014 under Order 38 Rule 5(1)and (3) under 151 Civil Procedure Code was filed to direct the defendant to furnish security for the suit claim failing which to attach the

petition mentioned property. The defendant filed a counter after hearing the counsel for the parties in the trial Court satisfied with the affidavit filed by the plaintiff and ordered to furnish security failing which to attach the petition mentioned property on 15.04.2015. Aggrieved by this order, the defendant filed C.MA.No.15 of 2015 before the IIInd Additional District Court, Erode, the appellate Court also confirmed the order of the trial Court and dismissed the appeal on 13.10.2015.

5.I have perused the affidavit filed by the plaintiff in I.A.No.659 of 2014 and the counter filed by the respondent in I.A.No.659 of 2014 and the order of the trial Court. The trial Court observed in para No.6 that the petitioner filed encumbrance certificate with regard to petition mentioned property for the period from 27.08.2007 to 31.01.2011 as Ex.P.2, it shows that the defendant/revision petitioner made six sale agreements with different persons. It exposes the fact the revision petitioner is continuously made an attempt to sell his property. It creates reasonable apprehension in the mind of the plaintiff to obtain security for the debt. The trial Court has

satisfied with the contention of the plaintiff and ordered to furnish security failing which ordered to attach the property. Therefore, the appellate Court in C.M.A.No.15 of 2015 confirmed the order of the trial Court. I find no reason to interfere with the impugned order passed by the learned IInd Additional District Judge, Erode and I find no merit in the revision petition.

6. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Index: Yes/No
Speaking Order: Yes/No
vsn

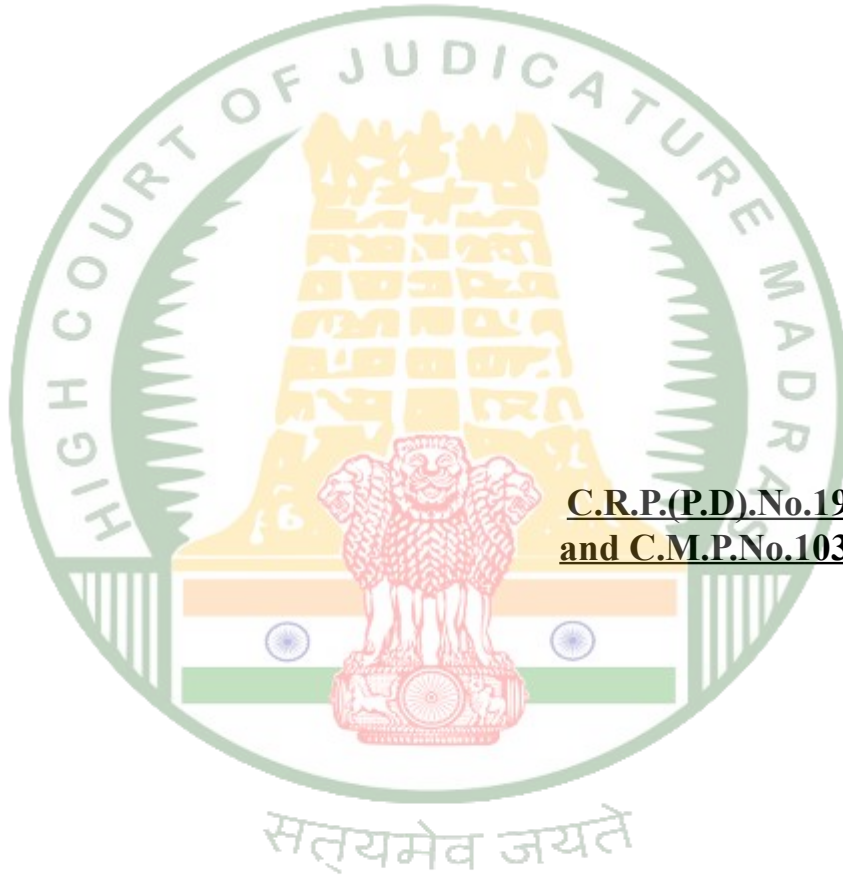
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V.SIVAGNANAM.J,

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