

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) Nos.1621 & 1622 of 2021

and C.M.P.Nos.12556 of 2021

(Through Video Conference)

1) P.G.Sivagnanam

2) P.N.Venugopal

3) P.N.Annamalai

P.N.Sundaramoorthy (Died)

4) S.Prema

5) S.Vanitha Rajasekar

6) Laguvaran

.. Petitioners / Judgment
Debtors 3 to 6 & 14 to 16
in both C.R.P's

Versus

1) G.Vasantha

2) B.Meenakshi

3) S.Usha Rani

.. Respondents 1 to 3/
Decree Holder in both
C.R.P.'s

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4) M/s.Gudiyattam Lungi Company,
Rep. by its Managing Partner,
Having its office at
No.21, Nari Murugappa Mudali Street,
Pichanoor, Gudiyattam,
Vellore District.

5) M/s. P.G.Ekambara Mudaliar,
P.G.Murugesu Mudaliar and Company,
Rep. by its Managing Partner,
Having Office at No.21, Mari Murugappa Street,
Pichanoor, Gudiyattam, Vellore District.
P.G.Gurunathan (Died)

6) P.S.Kirubakaran

7) P.S.Anandan

8) P.S.Selvaraj

9) G.Sulochana

10) P.G.Saravanan

11) P.G.Balaji

.. Respondents 4 to 11 /
Judgment Debtors 1, 2,
6 to 13 in both C.R.P's

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and final order dated 01.02.2021 passed by the Subordinate Court, Gudiyattam, Vellore District in E.A.No.nil of 2021 in E.P.No.8 of 2020 in O.S.No.48 of 2006.

For Petitioners : Mr.L.Mouli

For CAV RR 1 to 3: Mr.K.A.Ravindran

COMMON ORDER

Since the issue involved in both the Civil Revision Petitions are one and the same, they are disposed of by this common order.

2.C.R.P.No.1621 of 2021 is filed against the order passed by the learned Sub Judge, Gudiyatham in E.A.No. Nil of 2021 in E.P.No.8 of 2020 in O.S.No.48 of 2006. C.R.P.No.1622 of 2021 is filed against the order passed by the learned Sub Judge, Gudiyatham in E.A.No. Nil of 2021 in E.P.No.8 of 2020 in O.S.No.48 of 2006.

3. E.A.No.nil of 2021 in E.P.No.8 of 2020 in O.S.No.48 of 2006 was filed under Order XXVI Rule 9 and Section 151 of the Civil Procedure Code to appoint an Advocate Commissioner with a direction to note down the physical features of item nos.1 and 2 of the Execution Petition with the help of the Village Administrative Officer and Municipal Surveyors and file a report with plan.

4. The other E.A.was filed under Sections 141 of the Civil Rules of Practice read with Rules 139(2) & 140 of the Civil Rules of Practice and Under Order 21 Rule 11 (2) (3) and Section 151 of the Civil Procedure Code to reject the Execution Petition in E.P.No.8 of 2020.

5. Learned counsel for the petitioners submitted that the E.P. was filed without the necessary details in Column 4, 5 & 6 of the Execution Petition. There is a forty year old building in item no.2 of the property mentioned in the execution petition, but the description of the property in item no.2 shows that it is a vacant site. Though the preliminary decree was passed on 28.04.2016, there was an appeal and second appeal. The details regarding the appeal have not been furnished in Column No.4. These details are material details. These details are not given, and therefore, the execution petition has to be rejected.

6. It is the further submission of the learned counsel for the petitioner that there is a forty year old building in item no.2 of the petitioner mentioned property. However, the description of item no.2 shows that it was described only as a 'vacant site'. To find out the existence of a forty year old building, an

Advocate Commissioner has to be appointed to inspect the property along with the Village Administrative Officer and Municipal Surveyor. Learned Judge considered both the petitions and after hearing both the parties, rejected the petitions. The reasons stated by the learned Sub Ordinate Judge, Gudiyattam is that, these petitions are prematured for the reason that if there is a difficulty in taking the possession of the property, the amin will report about the difficulty. It is further stated that the decree holders are knocking the doors of justice right from the year 2006, though the judgment was delivered in their favour. It was upheld by the District Court and by this Court. The petition is filed only to protract the proceedings and is liable to be dismissed and accordingly, dismissed both the petitions.

7. The learned counsel for the petitioners submitted that the petitions were dismissed without giving an opportunity to the respondents for filing counter, especially, when there are defects in the Execution Petition in the matter of describing certain details with regard to appeal and description of the property in Item No.2.

8. Learned counsel for the respondents opposed this petition on the ground that both these petitions have been filed only to protract the proceedings.

9. This Court enquired the learned counsel for the petitioners as to whether the petitioners have taken up the plea that there is a forty year old building in item no.2 of the property mentioned in the Execution Petition before the trial Court and then in the counter filed in the Execution Petition. The learned counsel for the petitioners fairly conceded that this point was not taken before the trial Court or in the counter filed in the Execution Court. Therefore, it is apparent that both these petitions have been filed only to protract the proceedings. When this matter is pending for delivery of properties, the petitioners cannot take a new plea that a forty year old building exists in Item no.2 of the property. This issue should have been raised in the written statement. Having not raised this issue in the written statement, petitioners cannot raise this issue now. Other lapses like omission to mention the appeal number and other details are only minor errors and they may be corrected by way of filing an amendment petition.

10. This Court has considered both the unnumbered applications. These applications have been filed only to delay the process of delivery and that was rightly rejected by the learned Sub Judge, Gudiyatham, after hearing both the parties. This Court finds no reason to interfere with the order of the learned Sub Judge, Gudiyattam and accordingly, these **Civil Revision Petitions are Dismissed.** No costs. Consequently, connected miscellaneous petition is closed. The trial Court is directed to proceed with the further proceedings.

16.08.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order

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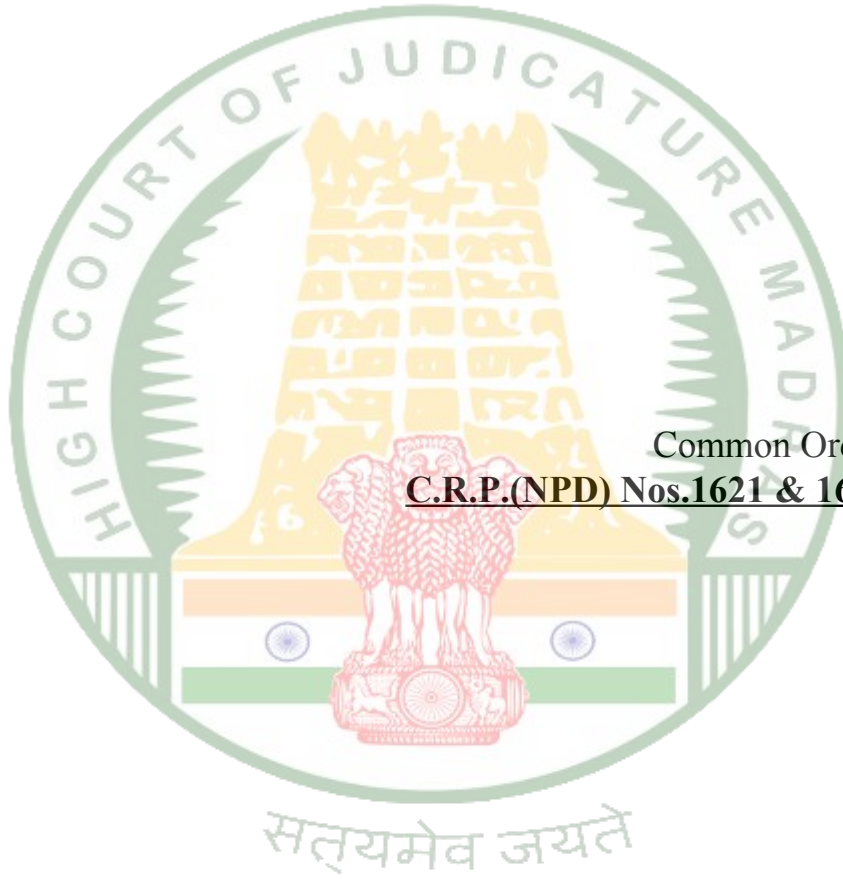
To:

The Sub Judge,
Gudiyatham

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G.CHANDRASEKHARAN, J.,

sts



Common Order made in
C.R.P.(NPD) Nos.1621 & 1622 of 2021

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