

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

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

CRP.NPD.No.2723 of 2018

and

CMP.No.16040 of 2018

Kalivarathan

..Petitioner

Vs.

1.Ezhilarasi
2.T.S.Chelladurai
3.B.Varadhan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in unnumbered EA.No. of 2018 in EA.No.236 of 2008 in EP.No.109 of 2006 dated 02.08.2018 on the file of Additional Sub Judge at Puducherry.

For Petitioner : Mr.C.B.Muralikrishnan

For Respondents

For R1 : Mr.V.G.Sureshkumar
R2 & 3 : No appearance

ORDER

This Civil Revision Petition is filed against the order passed in unnumbered EA.No. of 2018 in EA.No.236 of 2008 in EP.No.109 of 2006 dated 02.08.2018 on the file of Additional Subordinate Judge at Puducherry, thereby dismissing the petition seeking dismissal of the execution petition without numbering the same.

2. The second respondent herein filed suit for recovery of money and in default permit the second respondent to apply for final decree for sale of the mortgaged property for realisation of the amount determined by the trial court. The said suit was decreed in favour of the second respondent herein. On the strength of the decree, the second respondent filed execution petition in EP.No.109 of 2006. The property was brought for sale on 31.01.2008 and on the said day, the first respondent herein purchased the said property for valid sale consideration in the court auction. The said sale was confirmed on 10.04.2008 and the sale certificate was issued in favour of the first respondent on 22.04.2008. EP was pending for delivery of possession of the said property. There was obstruction while taking the delivery and as such the first respondent filed petition for removal of obstruction in IA.No.117 of 2018. By order dated 06.06.2018, the same was allowed and in pursuant to the said order, the possession of

the said property was also delivered in favour of the first respondent and thereafter, EP was also terminated. At that juncture, the petitioner filed petition praying to enquire the independent right of the petitioner / third party obstructor with respect of the said property and to dismiss the execution petition.

3. On perusal of the affidavit filed in support of the said petition, revealed that the petitioner entered into agreement for sale with the third respondent herein on 07.07.2004 for the total sale consideration of Rs.10,00,000/-, in which the petitioner paid a sum of Rs.2,00,000/- as an advance. Thereafter, he also paid a sum of Rs.5,00,000/- to the third respondent on 10.09.2007 and the same was duly endorsed in the backside of the agreement for sale. Due to his illness, the agreement for sale could not be materialised and on 31.12.2012, the third respondent executed sale deed in favour of him by the registered sale deed vide document No.8435 of 2012 at the Office of the Sub Registrar, Villianur, Puducherry. Further stated that the suit filed by the second respondent is a collusive one with the third respondent and obtained decree. On the strength of the decree, sale deed was also executed in favour of the first respondent in the court auction sale. In fact, the petitioner also verified the encumbrance certificate and does not find any sale deed in favour of the first respondent herein.

Therefore, he filed petition and the same was dismissed without even numbering the same.

4. The court below dismissed the same for the reason that the alleged transaction between the petitioner and the third respondent is hit by principle of *lis pendens*. That apart, the judgment was passed in OS.No.264 of 2005 and it is binding upon the petitioner also. If it is collusive decree obtained by the second respondent with the third respondent, the third respondent ought not to have executed sale deed on 31.12.2012 in favour of the petitioner. Therefore, only to create further encumbrance to the said property, the alleged sale deed was executed on 31.12.2012 in favour of the petitioner. As stated supra, in the court auction sale, the first respondent purchased the said property and the same was confirmed. Thereafter, sale certificate was issued on 22.04.2008 and the delivery of possession was taken over and the first respondent is in possession and enjoyment of the said property. Therefore, no right accrued to the petitioner herein to file the present petition. As such, the court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

28.07.2021

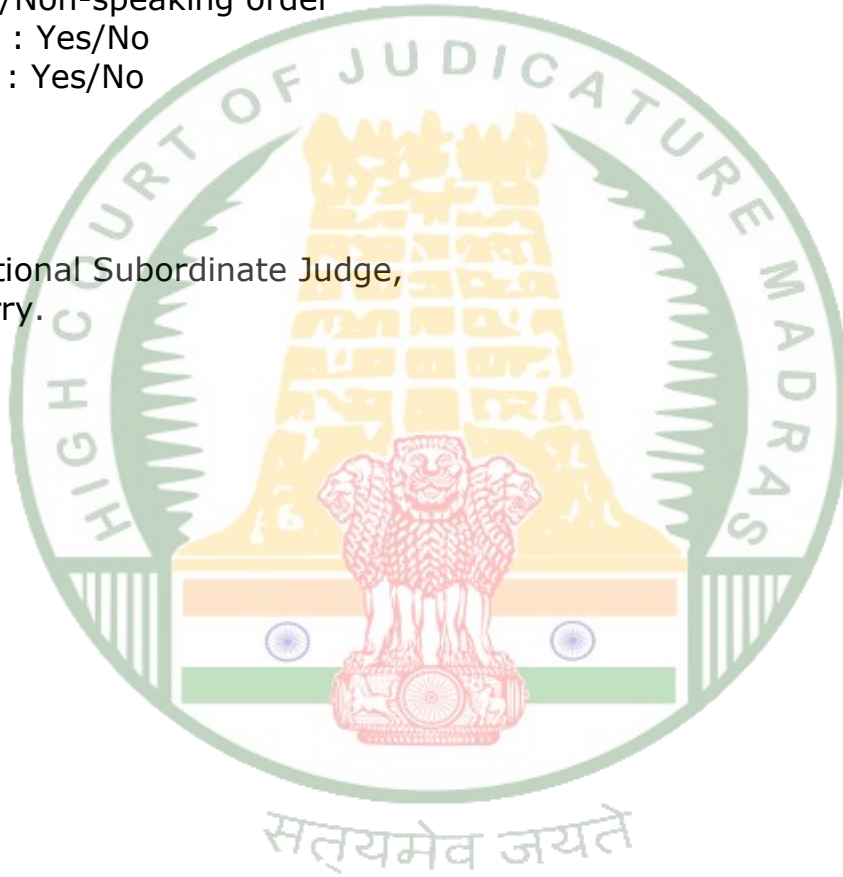
Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
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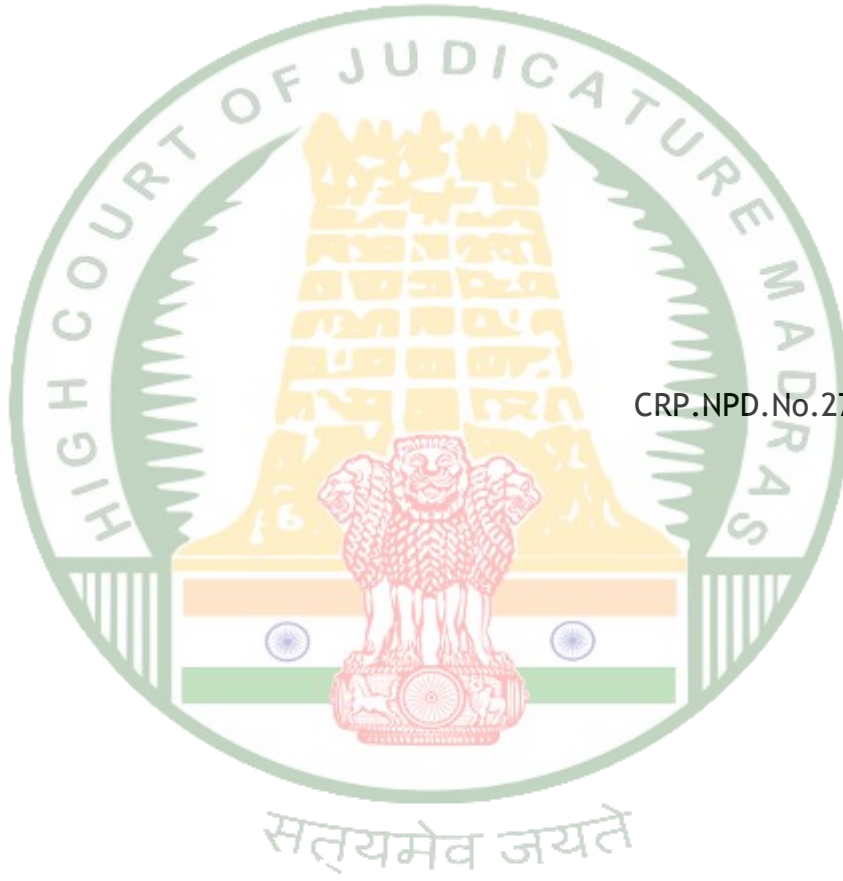
The Additional Subordinate Judge,
Puducherry.



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G.K.ILANTHIRAIYAN,J.

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CRP.NPD.No.2723 of 2018

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28.07.2021