

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

C.R.P. (NPD) Nos. 4018 and 4019 of 2014

**and
M.P. No. 1 of 2014**

R.Dhanabal

... Petitioner in both C.R.P.s

-VS-

1. V.Subbaiyan (Died)

2. Venkittammal

3. S.Shanthamani

4. Saroja

5. S.Nagaraj

6. Muthulakshmi

... Respondents in both C.R.P.s

Prayer in C.R.P. (NPD) No. 4018 of 2014:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to issue appropriate directions to the Court below to number the E.A. S.R. R. 4877 of 2011 in E.P. No. 5 of 2009 presented on 07.12.2011 by the Petitioner and to decide the said application on merits.

Prayer in C.R.P. (NPD) No. 4019 of 2014:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to issue appropriate directions to the Court below to number the E.A. S.R. 4877/1 of 2011 in E.P. No. 5 of 2009 returning the application on 05.06.2012 by the Petitioner and to decide the said application on its merits.

For Petitioner : Mr. N.Damodaran
(in both C.R.P.s)

For Respondents : No Appearance
(in both C.R.P.s)

COMMON ORDER
(The case has been heard through video conference)

These Civil Revision Petitions have been filed seeking for a direction to the Court below to number the applications in E.A. S.R. R. 4877 of 2011 and E.A. S.R. 4877/1 of 2011 in E.P. No. 5 of 2009 presented by the Petitioner and to decide the said applications on merits.

2. The Learned Counsel for the Petitioner would submit that the deceased First Respondent filed the suit in O.S. No. 345 of 2004 before the District Munsif Court, Avinashi seeking for recovery of money of Rs.47,600/- with interest at the rate of 12% per annum for the amount of Rs.35,000/- from the date of suit till the date of realization. The Trial Court allowed O.S. No. 345 of 2004 by judgment and decree dated 29.07.2007. He would further submit that since even as per the deceased First Respondent, the Petitioner along with one Muthulakshmi had borrowed a sum of Rs. 70,000/- from the deceased First Respondent on 01.11.1999 for their business and had jointly executed a demand promissory note in his favour to repay the same with interest of 12% per annum

on demand, whereas the deceased First Respondent had filed the suit only against the Petitioner, leaving the said Muthulakshmi and thereby, the decree is *non-est* and inexecutable. He would further submit that the case of the deceased First Respondent is that the said Muthulakshmi paid a sum of Rs.47,250/- on 01.10.2002 towards part of the principal and interest and necessary endorsement was made in the pro-note on the back side to that effect. He would further submit that since the remaining balance principal amount along with the interest was not paid, the deceased First Respondent initiated legal proceedings as against the Petitioner after causing notice to be served, seeking for the sum of Rs.47,600/- with interest at 12% per annum for Rs. 35,000/- from the date of suit till the date of realization. He would further submit that after obtaining the decree, the deceased First Respondent had filed E.P. No. 5 of 2009 on the file of the District Munsif Court, Avinashi seeking to enforce the decree by attaching the sale of the schedule mentioned properties. He would further submit that though the decree amount was only Rs.47,600/-, the property worth about Rs.1,00,00,000/- has been brought on sale by the deceased First Respondent. He would further submit that there was collusion between the deceased First Respondent and the Auction Purchaser and certain other irregularities were also committed by the deceased First Respondent and the Auction Purchaser. He would further submit that certain other properties

belonging to the Petitioner and certain other Survey Nos. belonging to the Petitioner which were not part of the schedule to the suit in O.S. No. 345 of 2004 were also added in E.P. No. 5 of 2009. He would further submit that by irregularity, the property was brought to sale and the sale was also effected. He would further submit that coming to know of the irregularities, the Petitioner filed an application in E.A. S.R. R. 4877 of 2011 under Order XXI Rule 90 read with Section 151 of the Code of Civil Procedure, 1908 seeking to set aside the sale dated 14.10.2011 on the ground of irregularity and other reasons and the Petitioner also filed an application in E.A. S.R. 4877/1 of 2011 under Order XXI Rule 90 read with Section 151 of the Code of Civil Procedure, 1908 seeking to stay the proceedings of E.P. No. 5 of 2009 till the disposal of E.A. S.R. R. 4877 of 2011. He would further submit that the said applications filed on 20.10.2011 were returned for the reasons that how these applications are maintainable without the payment of sale amount has to be clarified. He would further submit that the Petitioner has given his clarification that the applications were filed under Order XXI Rule 90 of the Code of Civil Procedure, 1908 and hence, payment or deposit of amount is not compulsory. He would further submit that the Petitioner as a bonafide owner of the property, who is affected by such illegal proceeding and thereby, he has every right to file applications under Order XXI Rule 90 of the Code of Civil Procedure, 1908 without

payment or deposit of the amount, whereas the Execution Court without considering the same, once again returned the same without numbering it and without hearing the parties. He would further submit that the Execution Court committed error in returning the applications without hearing the Petitioner against which, the present Civil Revision Petitions have been filed.

3. He would further submit that the Division Bench of this Court in the Judgment reported in [(1995) 2 CTC 632] (**Ramaswamy Gounder -vs- T.S.Ramaswamy Gounder**) has held that the case of the Petitioner has to be considered on merits and it is not necessary that the amount should be compulsorily paid. He would further submit that the Division Bench of this Court has also held that the proviso in Order XXI Rule 90 of the Code of Civil Procedure, 1908, only enables the Court at the initial stage after hearing the applicant to find out whether there is a *prima facie* case for setting aside the sale or not and if that be so whether in the facts and circumstances, there is a case for directing any security. He would further submit that this Court in the Judgment reported in [(2007) 2 CTC 632] (**Lathislal -vs- Lawarance Yesudhasan**), has held as follows:-

"14. I am unable to subscribe my views to the said argument made by the learned counsel for the respondent. When

an Application under Order 21, Rule 90, C.P.C. was filed on 6.10.2004 and the same has been returned on 8.10.2004 by the Court below granting one week time for making some compliance, the Court below should have awaited till the time expires for compliance of the return, namely, till 15.10.2004 and thereafter, should have passed an order confirming the sale after deciding the application filed by the petitioner under Order 21, Rule 90, C.P.C. The hurry in which the order of confirmation of sale passed by the Court below on 11.10.2004 itself is totally erroneous."

4. He would further submit that the order passed by the Execution Court is erroneous and thereby, he would seek that a direction may be issued to the Execution Court number the applications and hear the parties and pass appropriate orders. He would further submit that the even during the pendency of the applications, the Petitioner has made payment of Rs.10,000/-, Rs.2,500/- and Rs. 2,000/- on 29.08.2011, 10.10.2011 and 30.09.2011 respectively towards part satisfaction of the decree amount. He would further submit that while so, without any order on the applications, the Execution Court had confirmed the sale on 02.07.2012 which is totally illegal. He would further

reiterate that the Execution Court may be directed to number the applications and take it on file and hear the parties on merits.

5. Though notice has been served on the Respondents and Mr. R.Kumara Raja, Learned Counsel has filed vakalat on behalf of the Second and Sixth Respondents, there is no representation for the Respondents today. However, this Court finds that it is a matter between the Petitioner and the Court, it may not be necessary to hear the Respondents.

6. Heard the Learned Counsel for the Petitioner and perused the materials available on record.

7. This Court finds that the Execution Court without hearing the Petitioner on merits, had returned the applications and thereby, committed error and the order of return of the petitions deserves to be set aside.

8. At this juncture, Learned Counsel for the Petitioner would bring to the notice of this Court that on the point of territorial jurisdiction, the files are now transferred from the District Munsif Court, Avinashi to the I Additional District Munsif Court, Coimbatore. He would further pray that the original applications

filed along with these Civil Revision Petitions may be returned to the Petitioner so as to enable him to present it before the I Additional District Munsif Court, Coimbatore.

9. Taking into consideration the facts and submissions, the I Additional District Munsif Court, Coimbatore is directed to number E.A. S.R. R. 4877 of 2011 and E.A. S.R. 4877/1 of 2011 and after affording opportunity of hearing to the Petitioner in consonance with the principles of natural justice, pass reasoned orders on merits and in accordance with law. It is made clear that till such time, the applications are numbered and orders are passed, further proceedings in E.P. No. 5 of 2009 shall stand stayed.

10. In the result, these Civil Revision Petitions are allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.07.2021

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Index: Yes/No

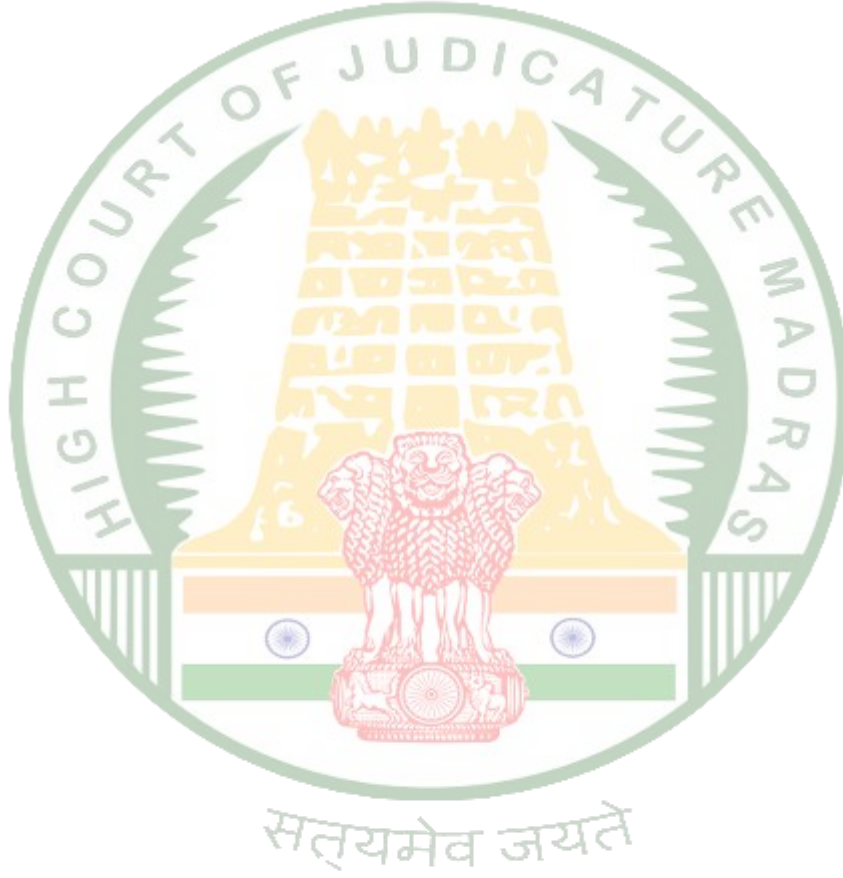
Internet: Yes/No

Speaking Order/Non-speaking Order

Note: Registry is directed to return the original applications in E.A. S.R. R. 4877 of 2011 and E.A. S.R. 4877/1 of 2011 filed along with these Civil Revision Petitions to the Petitioner under written acknowledgment after retaining a copy of the same for record.

To

1. The District Munsif Court,
Avinashi.
2. I Additional District Munsif Court,
Chennai.



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A.D. JAGADISH CHANDIRA, J.

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