



IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Civil Appellate Jurisdiction )

Friday, the Third day of December Two Thousand Twenty One

PRESENT

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMP.Nos.18006, 17964 and 18053 of 2021

in CMSA.Nos.7, 8 and 9 of 2016

P.ARUMUGAM [PETITIONER IN ALL THE PETITIONS]  
Vs

K.NANDHEESWARAN [RESPONDENT IN CMP.NO.18006/2021]

S.SUBRAMANI [RESPONDENT IN CMP.NO.17964/2021]

K.MAHALINGAM [RESPONDENT IN CMP.NO.18053/2021]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased To permit the petitioner to raise the following additional substantial question of law viz, "Where a property is not being brought to sale, but only delivery of possession is sought for in execution proceedings, whether a third party can file an application under Or 21 R 58 CPC to adjudicate upon his rights in such property?" (in CMP.No.18006 of 2021) pending disposal of the above CMSA.No.7 of 2016 and;

ii) To permit the petitioner to raise the following additional substantial question of law viz., "Where a property is not being brought to sale, but only delivery of possession is sought for in execution proceedings, whether a third party can file an application under Or 21 R 58 CPC to adjudicate upon his rights in such property?" (in CMP.No.17964 of 2021) pending disposal of the above CMSA.No.8 of 2016 and;

iii) To permit the petitioner to raise the following additional substantial question of law viz, "Where a property is not being brought to sale, but only delivery of possession is sought for in execution proceedings, whether a third party can file an application under Or 21 R 58 CPC to adjudicate upon his rights in such property?" (in CMP.No.18053 of 2021) pending disposal of the above CMSA.No.9 of 2016.



Order : These petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.T.MURUGAMANICKAM, SENIOR COUNSEL for M/S.ZEENATH BEGUM, Advocate for the petitioner in all the petitions and of MR.S.B.VISWANATHAN, Advocate for the Respondent in all the petitions, the court made the following order:-

The petitioner has filed the present Civil Miscellaneous Petitions to permit the petitioner to raise the following additional substantial question of law viz., where a property is not being brought to sale, but only delivery of possession is sought for in the execution proceedings, whether a third party can file an application under Order XXI Rule 58 of Civil Procedure Code to adjudicate upon his rights in such property. As per Section 100(3) of C.P.C., memorandum of appeal shall precisely state the substantial question of law involved in the appeal. The Court, when satisfied with the substantial question of law arisen in the appeal shall formulate the said question. As per proviso to Sub-Section 5 of Section 100 of C.P.C., the Court has power to frame any other substantial question of law not formulated by it, if it is satisfied that such substantial question of law is involved in the case. The Court has to record reasons for formulating the substantial question of law subsequent to earlier formation of substantial question of law.

2. In the present case, considering the materials on record, the substantial question of law now sought to be formulated by the petitioner is involved in the case as the appellant is raising the ground that Order XXI Rule 58 of C.P.C., is not applicable in execution of a decree for delivery of possession without attachment of property and sale of property and has to be considered on merits in deciding the C.M.S.A. For the above reason, the following substantial question of law is framed:

*"Where a property is not being brought to sale, but only delivery of possession is sought for in the execution proceedings, whether a third party can file an application under Order XXI Rule 58 of Civil Procedure Code to adjudicate upon his rights in such property?"*

and all the Civil Miscellaneous Petitions are ordered. Post the C.M.S.As on 10.12.2021.

-sd/-

03/12/2021

/ TRUE COPY /

Sub-Assistant Registrar ( Statistics / C.S. )  
High Court, Madras - 600 104.



TO

1 THE II ADDITIONAL DISTRICT JUDGE,  
SALEM.

2 THE ADDITIONAL SUBORDINATE JUDGE,  
SALEM.

Order

in

CMP.Nos.18006, 17964 and 18053 of 2021

in CMSA.Nos.7, 8 and 9 of 2016

Date :03/12/2021

From 26.2.2001 the Registry is issuing certified  
copies of the Interim Orders in this format  
PA (27/12/2021)