

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

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

C.R.P.(PD)No.3072 of 2018

Gopalsamy

... Petitioner

Vs.

1. Govindasamy

2. Sivakumar

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 02.11.2016 passed by the Principal Subordinate Court, Tiruvannamalai, in R.M.Nil/2016 in O.S.No.39 of 2010.

For Petitioner : Mr.B.Jawahar

For Respondents

For R1 : Mr.P.Mani

For R2 : No appearance

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ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 02.11.2016 passed by the learned Principal Subordinate Judge, Tiruvannamalai, in R.M.Nil/2016 in O.S.No.39 of 2010, thereby dismissing the petition for return of documents.

2. The petitioner is second defendant and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.39 of 2010 for specific performance as against the petitioner and second respondent. Before the trial court, the petitioner was examined as D.W.1 and he marked Ex.B.1 to Ex.B.4. The case of the petitioner is that the first defendant i.e., the second respondent herein executed mortgage deed in respect the suit properties in favour of the petitioner and thereafter executed sale deed in his favour. Considering the facts, the trial Court dismissed the suit as against the petitioner herein and granted alternative relief of return of money in favour of the first respondent herein, as against the second respondent.

3. Thereafter, the petitioner filed petition in R.M.Nil/2016 for return of the documents, which were marked through him in Ex.B.1 to Ex.B.4. The trial Court dismissed the said petition for the reason that the charge is created on the suit properties for the repayment of the advance amount and if the original documents are returned, the petitioner would encumber the suit properties and the first respondent cannot realize the decree amount. Aggrieved by the same, the petitioner filed this present Civil Revision Petition.

4. Admittedly, the suit was decreed only as against the second respondent herein that too for refund of the advance amount. The suit was dismissed as against the petitioner herein. It is also seen that initially a mortgage deed was executed and subsequently a sale deed was executed in favour of the petitioner herein. Therefore, no charge is created over the suit properties and the first respondent ought to have filed execution petition to recovery the amount from the second respondent in the manner known to law. Therefore, the order passed by the Court below is perverse and liable to be set aside.

5. In view of the above discussion, the order dated 02.11.2016 passed by the learned Principal Subordinate Judge, Tiruvannamalai, in R.M.Nil/2016 in O.S.No.39 of 2010, is hereby set aside. The Court below viz., the learned Principal Subordinate Judge, Tiruvannamalai is directed to return the documents, which were marked in Ex.B.1 to Ex.B.4, to the petitioner forthwith.

6. With the above directions, this Civil Revision Petition stands allowed. There shall be no order as to cost.

12.07.2021

Internet : Yes

Index : Yes/No

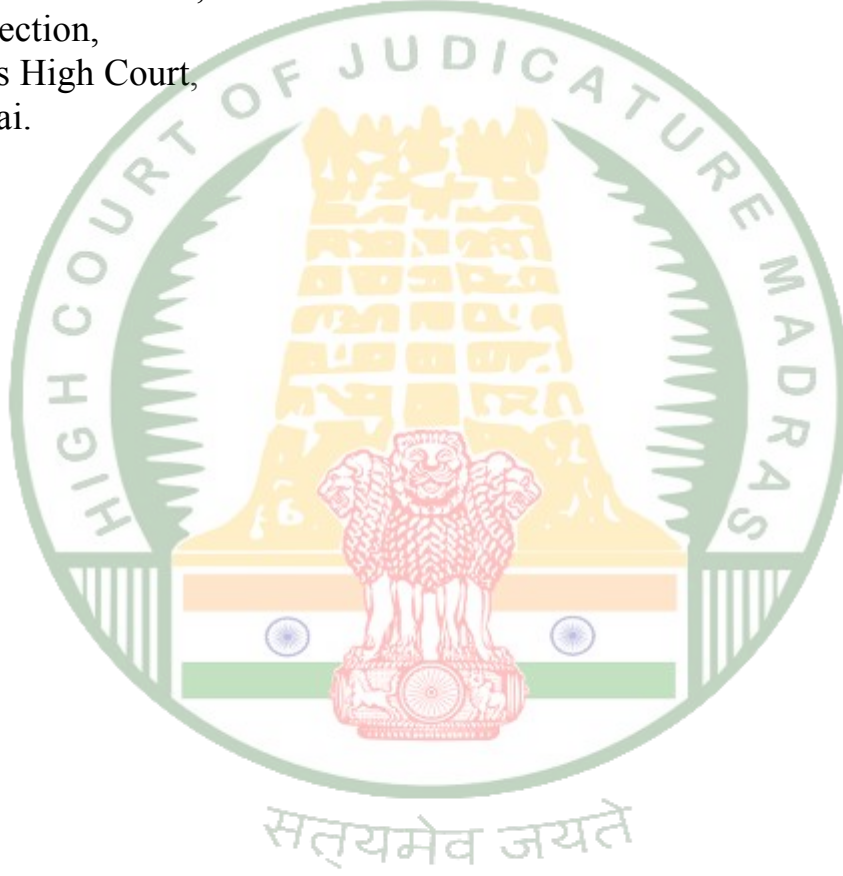
Speaking order/Non-speaking order

rts

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To

1. The Principal Subordinate Judge,
Tiruvannamalai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

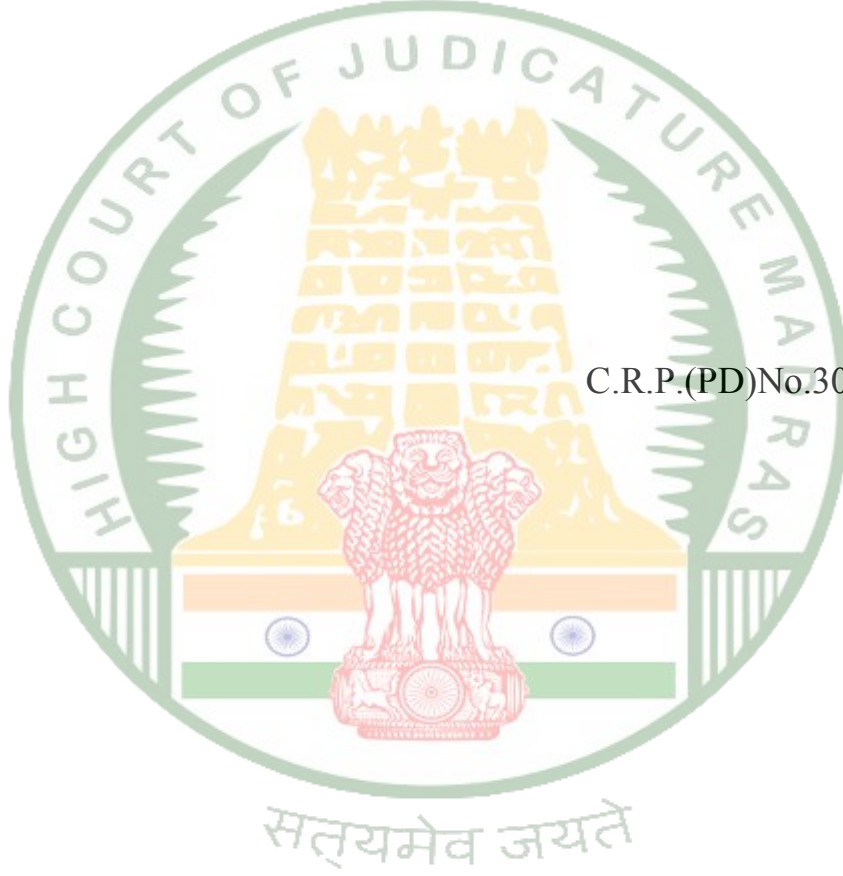


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G.K.ILANTHIRAIYAN, J.

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