

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P. (NPD) No. 4151 of 2018

and

C.M.P.Nos. 22890 of 2018 & 16681 of 2019

S. Shanthi

....

Petitioner

Vs

1. Jayapal

2. V.Babu

3. Sri Raj & Co (auctioner)

No.7, Sungurama Chetty,

Chennai – 600 001.

....

Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order dated 26.11.2018 made in I.A.No.9899 of 2018 in O.S.No.8544 of 1994 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner

: Mr.S.Buvaneswari

For R1

: Mr.R.Karunakaran

For R2 & R3

: No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 26.11.2018 made in I.A.No.9899 of 2018 in O.S.No.8544 of 1994 on the file of the IV Assistant Judge, City Civil Court, Chennai, thereby permitting the first respondent herein to withdraw the amount deposited by the petitioner.

2. The revision petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for return of original documents and also to cancel the mortgage deed. The suit was decreed in favour of the petitioner by a Judgment and Decree dated 05.03.2013. In pursuant to the decree, the petitioner filed an Execution Petition in E.P.No.2394 of 2015, in which, the petitioner deposited a sum of Rs.2,96,200/- to the credit of the suit. Pending suit, the second respondent herein through the private auctioneer viz., the third respondent herein, auctioned the suit property, in which, the first respondent purchased the same. However, the suit was decreed in favour of the petitioner and in the Execution Petition, the

petitioner deposited a sum of Rs.2,96,200/-. While being so, the first respondent filed a petition to order payment out of the suit amount which is lying in the account of the suit and the same was allowed. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioner.

3. In view of the decree, the sale deed executed in favour of the first respondent was set aside and the first respondent handed over all the certified parent documents of the suit property to the petitioner herein. Therefore, the first respondent has to be permitted to withdraw the amount deposited by the petitioner to the credit of the suit. Accordingly, the Civil Revision Petition stands disposed of with the following directions :-

(i) the first respondent is permitted to withdraw the amount of Rs.2,96,200/- lying in the credit of O.S.No.8544 of 1994 on the file of the IV Assistant Judge, City Civil Court, Chennai.

(ii) The Sub Registrar, Sembiam, is directed to delete the entry of the mortgage deed and the sale deed executed in favour of the first respondent forthwith.

(iii) The Sub Registrar, Sembiam, is directed to delete the entries without insisting the presence of the mortgagee viz., the second respondent herein, who already died without any issues.

Consequently, connected Miscellaneous Petitions are closed. No costs.

29.07.2021

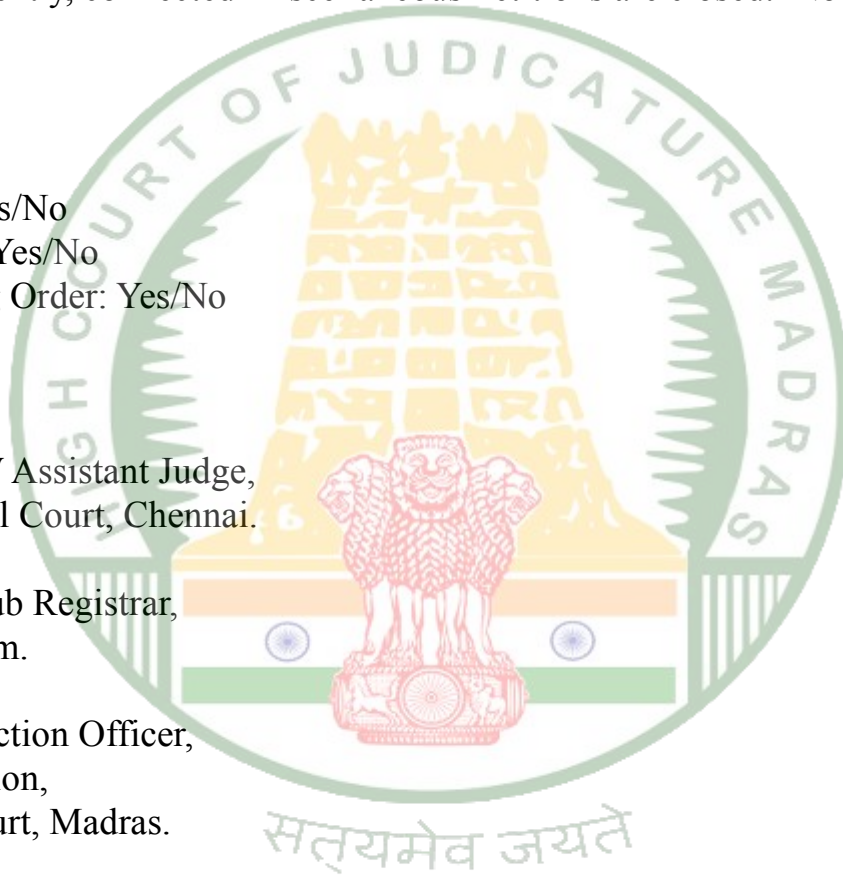
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Lpp

To

1. The IV Assistant Judge,
City Civil Court, Chennai.

2. The Sub Registrar,
Sembiam.

3. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY

C.R.P. (NPD).No.4151 of 2018

G.K.ILANTHIRAIYAN.J,

Lpp



C.R.P. (NPD) No.4151 of 2018
and
C.M.P.Nos.22890 of 2018 & 16681 of 2019

WEB COPY

29.07.2021