IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.S.A.No.8 of 2019
and
C.M.P.No.6797 of 2019
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Vaithilingam .. Appellant

Vs.

Mayakrishnan
Anjalaiammal (died) ..
Respondent

Civil Miscellaneous Second Appeal is filed under Section 100 read with Order 21 Rule 103 of the Code of Civil Procedure, against the judgment and decree dated 07.12.2018 in C.M.A.No.14 of 2016 on the file of the II Additional District Court, Pondicherry, confirming the fair and decretal order, dated 21.11.2016 in E.A.No.274 of 2011 in E.P.No.124 of 2004 in O.S.No.283 of 1982 on the file of the Additional Subordinate Court, Pondicherry.

For appellant : Mr.V.Raghavachari, Senior Counsel for M/s.V.Srimathi

For respondent: Mr.R.Subramanian for M/s.V.V.Sairam

JUDGMENT

This Civil Miscellaneous Second Appeal is filed against the judgment and decree dated 07.12.2018 in C.M.A.No.14 of 2016 on the file of the II Additional District Court, Pondicherry, confirming the fair and decretal order, dated 21.11.2016 in E.A.No.274 of 2011 in E.P.No.124 of 2004 in O.S.No.283 of 1982 on the file of the Additional Subordinate Court, Pondicherry.

2. The respondent along with Anjalai Ammal (since deceased) had filed O.S.No.283 of 1982 against the appellant before the Court below for passing preliminary decree of partition and separate possession of 1/2 share in the schedule item of the property in favour of the plaintiff(s) and to direct the defendant (appellant herein) to pay mesne profits @ Rs.2,000/- per year from 1978 till the date of the suit and also ascertain future mesne profits. The said suit was dismissed with costs, against which, the plaintiff(s) preferred First Appeal in Appeal Suit No.144 of 1986 before the II Additional District Court, Pondicherry, which was allowed with costs, setting aside the judgment and decree of the trial Court and the suit in O.S.No.283 of 1982 was decreed with costs, granting preliminary decree of partition and separate possession of half share in the schedule item of the property in favour of the plaintiff(s) and the

plaintiff(s) are declared to be entitled to absolute possession of item Nos.1, 2 and 4 of the schedule properties, with delivery of possession therein. Further, the defendant (appellant herein) was directed to pay the mesne profits @ Rs.2,000/- per year from 1978 till partition effected and the future mesne profits would be ascertained to law for payment of Court fee at the time of passing final decree. The defendant was directed to pay the plaintiff(s) a sum of Rs.2,354/- towards costs throughout. The judgment and decree of the first appellate Court had become final, as no further appeal was filed.

3. Thereafter, the plaintiff(s) filed E.P.No.124 of 2004 before the trial Court for ordering attachment and sale of the properties mentioned in the Execution Petition therein so as to enable the decree-holder(s) to recover the E.P. mentioned amount from the sale proceeds. Pending the execution proceedings, the defendant (judgment-debtor) filed E.A.No.274 of 2011 in E.P.No.124 of 2004 before the Court below, under Order 21 Rule 90 read with Section 151 of the CPC for setting aside the sale that was conducted on 24.11.2011. The said E.A. was dismissed, against which, the defendant preferred C.M.A.No.14 of 2016 before the first appellate Court and the same was dismissed, against which, the defendant (judgment-debtor) has filed the present Civil Miscellaneous Second Appeal (CMSA).

4. In a nut-shell, brief averments of the plaint, written statement, and the subsequent pleadings are stated hereunder:

Plaint: The schedule property is situated in Pondicherry and also at South Arcot District, which were owned by one Kulla Gounder, who had two sons, namely Parasourama Counder and Subraya @ Subramanian. The plaintiff is the son of Subrayan @ Subramanian and that the said Kulla Counder executed a Will in the year 1926, bequeathing his properties in favour of his two sons and the said Will was acted upon and the properties were enjoyed by his two sons. The plaintiff is the only son of Subrayan @ Subramanian, who during his life time, executed a Will relating to the properties owned by him in the Pondicherry region bequeathing all the items of the properties in favour of Anjalai Ammal, his wife for life enjoyment and the vested reminder in favour of the plaintiff. In relation to the properties at South Arcot District, he executed a settlement deed in the year 1950. The Will executed by Subrayan @ Subramanian relating to the properties owned by him at Pondicherry jurisdiction, were also enjoyed by the plaintiff(s) and his mother after the lifetime of the plaintiff's father. The plaintiffs and his mother settled in Santhikuppam Village. Taking advantage of the plaintiffs' absence and young age, the defendant entered into the properteis and enjoying the same. The properties were not so far then partitioned, relating to the items in the jurisdiction of Pondicherry. The Patta for the property(ies) was changed in the name after the lifetime of his father and the plaintiffs are paying Tax in respect of the properties. The defendant is enjoying Item Nos.1 to 5 and 7 of the schedule mentioned properties therein and getting Rs.2,000/- per year. The plaintiff(s) issued lawyer's notice in the year 1975, but the defendant refused to receive the same. The plaintiff(s) is in possession of one item of the properties as joint owner. Another lawyer's notice was issued to the defendant on 11.05.1982 requesting for partition of the properties, and as there was no reply, the present suit for partition and separate possession is filed by the plaintiff(s).

Written statement:

The claim of the plaintiff that as son of Subrayan alias Subramanian and Anjalai, he has claimed the property, is an absolute falsehood. The Will stated to have been executed by Kulla Counder, in the year 1926, is also denied. Kulla Gounder or Subraya Gounder did not write any Will. The Patta has now been transferred in the name of the defendant and Parasurama Gounder himself died about 30 years ago and as such, the property remained in the enjoyment of the defendant for the last 30 years continuously and he has also paid tax and as such, the defendant has title by prescription. The claim of the plaintiff that Patta was changed after the lifetime of the plaintiff's father, is false. Only in the re-survey process, the first plaintiff seems to have manoeuvered to make representation before the authorities and this defendant had also objected to the same. When there is no claim for partition, there will be no claim for mesne profits.

Additional written statement:

Second item of amendment which is to the effect of passing of preliminary decree for partition and separate possession of half share in item Nos.3 and 5 to 8 of the schedule in favour of the plaintiff, does not find place in the amended plaint at all. The claim that the defendant sold his share of the property in the year 1976 relating to item Nos.1, 2, 4 and 8, is incorrect and made for the purpose of the suit.

Execution Petition:

This execution petition is filed by the plaintiff to order attachment and sale of the properties mentioned in the Execution Petition so as to enable the petitioner/decree-holder to recover the execution petition mentioned amount from the sale proceeds.

Counter to the execution petition: During the pendency of the Second Appeal filed before the High Court in S.A.No.674 of 1991 against the First Appeal in A.S.No.144 of 1986 (I Additional District Court, Pondicherry) against O.S.No.283 of 1982 (I Additional Subordinate Court, Pondicherry) having been decreed, the Execution Petition filed is not maintainable, and that S.A.No.674 of

1991 was dismissed for default on 28.06.2022 and restoration petition is also filed to restore the Second Appeal, and thereafter, the Second Appeal is likely to be taken up for hearing and hence, at this stage, the Execution Petition is not maintainable.

Execution Application: Pending the Execution Petition, the Execution Application was filed by the judgment-debtor for setting aside the sale conducted on 24.11.2011. The E.P. was filed for sale of the EP schedule mentioned properties for realising the due to the respondents/decree-holders. The sale has been conducted by the Court without following any procedure by the respondents. Fraud has been committed by the respondents in proclamation of sale in order to defeat the genuine rights of the petitioner/judgment-debtor. Initially, the sale was fixed on 17.11.2011, which has not been conducted, but sale had been conducted on 24.11.2011 without following the provisions of law, and great prejudice is being caused to the defendant over the EP schedule mentioned property. The alleged sale conducted on 24.11.2011 is void-ab-initio. The bailiffs of the Court conducted sale and no bidder was endorsed. The respondent in the E.A. was directed to furnish item-wise upset price in respect of the schedule mentioned properties. The respondent in the EA proceeded with the sale and was a successful bidder for meagre amount. The provisions of the Code of Civil Procedure (for short, 'CPC') had not been followed and material facts have been suppressed. The sale warrant amount has been wrongly calculated without any records. The EP schedule mentioned properties are worth more than Rs.40 lakhs and they were sold for a paltry sum of Rs.4,50,000/-. The respondent in the EA has wilfully and wantonly furnished low upset price causing prejudice to the right of the respondent in the E.A. Hence, the defendant prayed to set aside the sale conducted on 24.11.2011.

Counter in E.A:

The decree-holder stated that himself and his mother who was dead during the proceedings, earlier filed the suit and it has come up to the stage of E.P., in which E.A. is now being filed. This Court granted interim stay on 27.01.1993 in C.M.P.No.14515 of 1992 in S.A.No.674 of 1991 from taking delivery in respect of the properties and from passing final decree and permitted the proceedings for passing of final decree and for fixing mesne profits. The decree-holder filed I.A.No.1902 of 1990 in O.S.No.282 of 1982 for assessing the mesne profits from the Coconut and Palm trees and Advocate Commissioners were also appointed and with the help of expert from the Agriculture Department, and the mesne profits were assessed. During the pendency of the Second Appeal before this Court, the respondent/decree-holder cut and carried away the coconut trees and this was reported to the local Police on various dates and since the Police had not taken any action, the decree-holder filed O.S.No.303 of 1992 before the

First Additional District Munsif Court for injunction against the judgment-debtor, which was also granted. Subsequently, E.P.No.124 of 2004 was filed for recovery of their share of the amount in the mesne profits by way of sale. E.P.No.125 of 2004 was filed by the decree-holder for delivery of possession of their share. A third party obstructor filed E.A.No.394 of 2005 by obstructing the delivery proceedings on the ground that he was cultivating Coconut and there was Coconut Thope and the said E.A. came to be dismissed. The value of the properties as fixed by the Court Amin with the help of Revenue Official, is Rs.3,20,160/-, but the value as fixed by the Court was Rs.4,50,000/-, but the value furnished by the decree-holder is Rs.2,00,000/-. Sale proclamation has been made and the date of auction was fixed on 20.11.2005 and the judgment-debtor failed to furnish his valuation. The small pieces of land with Coconut and Palm trees, which have no access, could not be sold in pieces. The auction sale was conducted on 20.10.2005, and the participants did not bid for Rs.4,50,000/- which is the upset price and the auction did not materialise on that day. The properties are situated more than 10 kms. from Puducherry and the place of the property is Aandiyarpalayam (a remote village). The respondent/decree-holder states that he had also filed an application to direct the petitioner/judgment debtor to deposit Rs.2,26,325/- and the said application had been allowed, but the petitioner/judgment-debtor did not comply with the order. Thereafter, the Court Amin has followed the procedures and fixed the sale in the presence of witness too. Subsequently, all the participants have been asked to come for auction on 24.11.2011, which was conducted and 5 bidders participated and the respondent/decree-holder subsequently has deposited Rs.3,51,030/- on 01.12.2011 being the remaining bid amount. The properties are not worth about Rs.40 lakhs.

Order passed in E.A: The Court below, on 21.11.2016, dismissed the E.A.No.274 of 2011, against which the defendant in O.S.No.283 of 1982, preferred appeal in C.M.A.No.14 of 2016, which was also dismissed on 07.12.2018, against which, the present CMSA is filed by the defendant/judgment-debtor.

5. Learned Senior Counsel appearing for the appellant/judgment-debtor submitted that the Execution Petition in E.P.No.124 of 2004 was filed by the decree-holder for sale of schedule mentioned properties for realising the dues to the respondent and the sale has been conducted by the Court without following any procedures by the respondent. The respondent had committed fraud in proclamation of sale in order to defeat the genuine rights of the appellant. Initially, the date of sale was fixed on 17.11.2011, but the sale was not conducted on 17.11.2011 and the appellant came to know that the sale was conducted on 24.11.2011 without following the provisions of law. No order of

proclamation was made for conducting sale on 24.11.2011, and therefore, the sale conducted on 24.11.2011 was void-ab-initio and that the Bailiff of the Court conducted the sale and no bidder was endorsed. The respondent was directed to furnish item-wise upset price in respect of the schedule mentioned properties. The respondents, without complying with the above basic conditions, proceeded with the sale and proclaimed himself as successful bidder for a very meagre amount and the proclamation of sale was not made as per the requirements/provisions of law. Further, he submitted that the properties are worth about more than Rs.40 lakhs, whereas the said property was sold by Court auction for the amount of Rs.4,50,000/-. The respondents wilfully and wantonly furnished very low upset price in order to participate himself in the auction which prejudiced the rights of the appellant. Therefore, the sale conducted on 24.11.2011 may be set aside.

6. Learned Senior Counsel appearing for the appellant further contended that the Court below had not followed any procedures before ordering the application filed under Order 21 Rule 72 CPC. The Executing Court had committed serious error in allowing the property to be sold without adopting the procedures contemplated under Order 21 Rules 64 and 66 CPC. The amount due by way of mesne profits is Rs.2,25,324/- in seeking to bring the property beyond the scope of the amount recoverable which is in line with the principles

laid down by the Courts in the decisions reported in 1994 (1) LW 49 (Desh bandhu Gupta Vs. N.L.Anand and another), 2006 (3) CTC 180 (Balakrishnan Vs. Malaiyandi Konar) and 2015 (2) CTC 285 (Pavayammal Vs. Thangammal). As per these decisions, a duty is cast upon the Court to sell only such portion or portions thereof as is necessary to satisfy the decree. The fixation of upset price is the duty of the Court and the present case, the Court Nazir has reminded the Court of its obligation ignoring the request of the Court Officer and directing the sale of valuable property. The Executing Court having fixed all the items at Rs.4,50,000/-, should have directed the portion of the property for sale that is sufficient to recover Rs.2,26,000/- which is almost 50% higher than the amount recoverable. Therefore, the appellant filed E.A.No.274 of 2011 in E.P.No.124 of 2004 in O.S.No.283 of 1982 under Order 21 Rule 90 read with Section 151 CPC to set aside the sale conducted on 24.11.2011. Both the Courts below have failed to appreciate the materials and also did not properly apply the legal provisions and erroneously dismissed the application filed by the applicant and therefore, now the appellant has filed the present CMSA on the following substantial questions of law:-

(i) Whether the Courts below are justified in dismissing the application seeking to set aside the sale, when the appellant had proved apparent prejudice and illegality in the conduct of sale ?

(ii) Whether the Courts below are justified in directing sale of property far beyond the amount recoverable under decree ?

(iii) Whether the action of the Executing Court in not selling the portion of the property that is required for discharging the debt which is the statutory mandate under Order 21 Rules 64 and 66 CPC ? and

(iv) Whether the Courts below are right in permitting excessive execution, contrary to the principles laid down by the Supreme Court in 1994 (1) LW 49 (Desh bandhu Gupta Vs. N.L.Anand and another) ?

7. In support of his submissions, the learned Senior Counsel appearing for the appellant relied on the following decisions:

(i) 1977 (3) SCC 337 (Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma and others);

(ii) 1982 (95) LW 581 (Palaniappa Gounder Vs. Nallamuthu Gounder and others);

(iii) 1985 (98) LW 352 (Subba Naicker Vs. Durairaj);

(iv) 1985 (98) LW 485 (V.P.Sarangapani Kounder and another Vs. M/s.Mercantile Credit Corporation Ltd., Madras);

(v) 1988 (1) LW 20 (Elumalai Naicker Vs. Kishtambal Ammal);

(vi) 1989 Supp (2) SCC 693 (Ambati Narasayya Vs. M.Subba Rao and another);

(vii) 1994 (1) SCC 131 (Desh Bandhu Gupta Vs. N.L.Anand and Rajinder

Singh);

(viii) 1997 (4) SCC 356 (Lal Chand Vs. VIII Addl. Disrict Judge and others);

(ix) 2003 (1) ICC 402 (Madras) (Murugesan and Company rep. by its Partner Nagarathinam Vs. Vijayalakshmi and others);

(x) ILR 2004 Karnataka 3649 (Abdul Kareem @ Mohammed Saleem Vs. A.C., and others);

(xi) 2005 (10) SCC 235 (S.Mariyappa and others Vs. Siddappa and another);

(xii) 2009 (16) SCC 346 (Pappu Ramireddy Vs. Pappu Lakshmi Narayan Reddy and others);

(xiii) 2015 (1) MWN (Civil) 695 (Pavayammal Vs. Thangammal);

(xiv) MANU/UP/0076/1978 = AIR 1978 Allahabad 299 (Bahori Vs. Vidya Ram);

(xv) MANU/TN/0720/2012 = 2012 (2) LW 683 (Manickam Moopan Vs. Lakshmi and others);

(xvi) MANU/AP/0609/2005 (K.Narender and others Vs. K.Mallesh and others).

8. Learned counsel for the respondent, on the other hand, submitted that

the respondent filed Interlocutory Application in I.A.No.1902 of 1990 in O.S.No.282 of 1982 for assessing the mesne profits from the Coconut and Palm trees lying on and over the suit properties. The Court appointed an Advocate Commissioner who filed report and additional report, which indicates that the suit properties are only Coconut Grove and subsequently, the Advocate Commissioner was appointed with the help of an expert from the Agricultural Department, who has assessed the mesne profits derived from the Coconut trees and Palm trees. During the pendency of this CMSA, the appellant has begun to cut and carry away the Coconut trees with ulterior motive and the same was reported to the local Police, who had not taken any action and hence, the plaintiff filed the suit in OS.No.302 of 1992 on the file of the First Additional District Munsif Court for injunction restraining from cutting away the Coconut trees and the Court also granted permanent injunction. Subsequently, he filed E.P.No.124 of 2004 for recovery of the shares and the amount in mesne profits by way of sale. The respondent also filed Execution Petition in E.P.No.124 of 2004 for recovery of portion of their shares. The appellant set up a third party-obstructor to file a petition in E.A.No.394 of 2005 by obstructing the delivery proceedings by alleging that he was cultivating in the Coconut grove and after contest, the said application came to be dismissed. The appellant did not object for properties being brought for sale. The value furnished by him is Rs.2 lakhs and the value of the property as fixed by the Court Amin with the help of

Revenue Officials is Rs.3,20,160/- and based on the value fixed by the respondents, the Court fixed Rs.4,50,000/- as the upset price and the sale proclamation was made property and the date of conducting Court auction was fixed on 20.11.2005 and the proclamation was done according to the procedures established by law. The appellant failed to furnish his valuation and the appellant did not raise any objection to fix the value item-wise and the property should be sold item-wise. He never raised objection that the property which have to be brought for sale should be sold item-wise. The small pieces of land with Coconut and Palm trees which have no access, cannot be sold in pieces. The auction sale was conducted on 20.10.2005 and the participants were not willing to bid for Rs.4,50,000/- which is the upset price fixed by the Court. Therefore, the auction was not materialised on that day. The properties are situated more than 10 kms. from Pondicherry and the place where the properties are situated is in Andiyarpalayam, which is a remove village. In fact, there is no access to the properties and therefore, the respondent himself filed two applications for reduction of upset price and sought permission to bid and set-off. The appellant has not filed any objections and he stalled the proceedings for years together and the respondents have filed application directing the appellant to deposit Rs.2,26,325/- which was allowed and the appellant has not complied with the said order. After allowing the application for reduction of upset price and leave to bid the proclamation was ordered to be carried out, the Court Amin followed the procedures and he fixed the sale value at the residence of the appellant. The participants including the respondents were present at the Central Nazir Section, seeking some clarification in the Court and all the participants were asked to come for auction on 24.11.2011. In fact, the appellant was very much present on 17.11.2011 and on 24.11.2011 also. In fact, the case was postponed to 18.11.2011 for report and the appellant was very much present before Court, but he did not state anything. The auction was conducted on 24.11.2011 and at that time, five bidders were present and the properties were sold for Rs.4,50,000/-. In fact, the auction price is Rs.50,000/- more than the upset price fixed by the Court. The respondent also deposited Rs.1,12,500/- being 1/4 of the amount of the bid amount. The appellant did not file any application for setting aside the sale on 25.11.2011 and the respondent, subsequently deposited Rs.3,51,050/- on 01.12.2011, which is the remaining bid amount. The respondent also deposited non-judicial stamp paper for Rs.20,500/- on 05.12.2011. The appellant has not proved that the properties were more than Rs.40 lakhs and the appellant has not paid any money and after giving the opportunity, but all the procedures contemplated under the CPC have been meticulously followed. The appellant never raised objection at the time of fixing the upset price and the proclamation was brought on sale for the entire properties, since the appellant knows that there is no access if the properties and items have been divided and separately sold. One way or the other, they have protracted the case and therefore, the present CMSA is liable to be dismissed.

9. In support of his submissions, learned counsel for the respondent relied on the following decisions:

(i) AIR 1991 SC 770 (Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala and others), and

(ii) 2022 (12) SCALE 737 (Jagan Singh & Co. Vs,. Ludhiana Improvement Trust).

10. Heard both sides and perused the materials available on record.

11. The main contention of the learned counsel for the appellant is that the upset price was not fixed separately for four items. But the sale conducted is not proper and fresh proclamation was not made. It is seen from the records that the appellant participated in the Execution Proceedings throughout and the upset price was not fixed separately for four items and the appellant did not raise any objection at that time and when the upset price was fixed, he has not filed any objections. The upset price was fixed properly after hearing both sides and only on being satisfied with the same, the Court fixed the upset price from Rs.4,50,000/- to Rs.4,00,000/- and even during that time, the appellant did not

raise any valid objection for fixing the upset price. As already stated, the appellant was participating throughout the Execution Proceedings and in order to pay the value of the mesne profits and despite giving sufficient time, the appellant did not pay the said amount. Therefore, he allowed the Executing Court proceedings to proceed further. The appellant had kept quiet and the property(ies) were sold on 24.11.2011 without proclamation.

12. From the records, it shows that the Executing Court, on 23.09.2011, by fixing the sale date as 17.11.2011 and further hearing on 18.11.2011 and the Court Nazir made an endorsement that except the decree-holder, no bidder appeared and the sale was adjourned and therefore, subsequently the sale was conducted on 24.11.2011. Initially, all the proceedings were within 30 days and there was no necessity for fresh proclamation. As already stated, the upset price was fixed in the presence of the appellant, who did not challenge the same and kept quiet.

13. It is further seen from the records that there is no objection made by the appellant for reduction of the upset price. The judgment-debtor was given time for depositing the amount of Rs.75,000/- within a period of 10 weeks by this Court in C.M.P.No.12106 filed in S.A.No.678 of 1991. The appellant has not deposited the said amount and once again, opportunity was provided to the

appellant by the decree-holder through E.A.No.443 of 2005 to deposit the amount of Rs.2,26,325/- on 05.08.2011, which is the mesne profits, i.e. the decree amount. Even after that, the appellant failed to comply with the order and pay the amount and therefore, the properties were brought for sale and if the adjournment for sale is beyond 30 days and also if there is any change in the upset price, fresh proclamation has to be done and whereas, in this case, there is no such incidence. Even though the upset price was reduced and fixed for Rs.4,00,000/-, since there was no bidder, the respondent himself, after obtaining permission from the Court, participated and bid the property for Rs.4,50,000/- which is Rs.50,000/- above than the upset price fixed.

14. Therefore, on a combined reading of the entire materials available on record, it is seen that the attitude of the appellant is that he has been silent spectator and from the entire records, he was not supposed to pay the mesne profits fixed by the Court which has ended finality, and there is no challenge to the same. Even on the earlier occasion, this Court directed the appellant to deposit Rs.50,000/- within the period of 10 days, in C.M.P.No.12106 filed in S.A.No.674 of 1991. The appellant had missed the bus and further opportunity was given in E.A.443 of 2005 to deposit the decree amount and that time also, he missed the bus. When the upset price was fixed, the appellant did not raise any objection to the same for the entire property which was fixed and he has not

further challenged the same, and therefore, the appellant has not proved that the properties are worth about Rs.40 lakhs and even much less than the above Rs.4,50,000/- bid the amount. The appellant also had not proved that there are sufficient bidders who came to bid the properties from the upset price fixed and despite that, the Court did not sell the property through Court auction and accommodated the respondent to purchase the property.

15. On a reading of the entire materials available on record, it is clear that the Executing Court followed the procedures meticulously and sufficient opportunity was given to the appellant and the appellant again missed the bus and there was no serious objection from his side and he has not also challenged the upset price fixed for the entire item of the properties and he has also failed to comply with the directions of this Court.

16. Under the above circumstances, in the absence of any proof that there was any irregularity which would go to the root of the matter, the appellant is not entitled to the relief sought for.

17. Therefore, all the substantial questions of law are answered against the appellant and in favour of the respondent.

18. The decisions relied on by the learned counsel for both parties are distinguishable on facts, and hence, they are not applicable to the facts of the present case.

19. The present CMSA is accordingly dismissed. There shall be no order as to costs. Consequently, C.M.P. is closed.

.03.2024

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To

1. The Second Additional District Court, Pondicherry,

2. The Additional Subordinate Court, Pondicherry.

3. The Section Officer, VR Section, High Court, Madras.

P.VELMURUGAN, J

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Pre-delivery Judgment

in C.M.S.A.No. 8 of 2019

Judgment delivered

on 28.03.2024