



C.R.P.(MD) No.359 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD) No.359 of 2018

and

C.M.P(MD) No.1616 of 2018

G.S.Ramachandran
S/o. Shanmugam
Now residing at Post Box No.31527,
Modern Arts, Ajman, U.A.E
Permanent resident at
No.2/21, Katcharkula Street,
Sannapuram, Thirunageswaram
Kumbakonam Taluk,
Represented by his Power Agent,
P.R.Mohandhas,
S/o. Rajamniam,
No.40, New Middle Street,
Thirunageswaram
Kumbakonam Taluk,
Thanjavur District.

... Petitioner/Petitioner/
3rd Party/3rd Party

-VS-

1. Jeyabalan

... 1st Respondent/1st Respondent/
Auction Purchaser/3rd Party/3rd Party

2. Renugadevi

... 2nd Respondent/2nd Respondent/
Respondent/Petitioner/Plaintiff

3. Sengalani

... 3rd Respondent/3rd Respondent/
Respondent/Defendant



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PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decreetal order dated 13.04.2017 passed in E.A.No.177 of 2013 in E.A.No.80 of 2013 in E.P.No.02 of 2013 in O.S.No.217 of 2005 on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District.

For Petitioner : Mr.Jameel Arasu
For Respondents : Mr.G.Mohan Kumar – for R1 and R2

ORDER

The present Civil Revision Petition has been filed by the petitioner under Section 115 of C.P.C, against the fair and decreetal order dated 13.04.2017 passed in E.A.No.177 of 2013 in E.A.No.80 of 2013 in E.P.No.02 of 2013 in O.S.No.217 of 2005 on the file of the Principal District Munsif Court, Kumbakonam, Thanjavur District.

2. The petitioner before the trial Court is the revision petitioner herein.

3. The short facts which gives rise to the instant Civil Revision Petition are that, the petitioner namely, G.S.Ramachandran, is the brother of the judgment debtor viz., Sengalani. It appears that in a suit filed by the wife of



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Mr.Sengalani for the relief of maintenance in O.S.No.217 of 2005, against him was decreed on 30.11.2006. In which, the Court has also created a charge over the petition mentioned property. According to the decree dated 30.11.2006, the description of property is as follows:

“கும்பகோணம் தாலுக்கா, திருநாகேஸ்வரம்
கிராமம், கச்சார குளத்தெரு, டோர் நம்பர் 2/21,
பழைய சர்வே எண் 195/1 புதிய சர்வே எண் 402/32
மாடி வீடு கொல்லை, எலக்டிரிக் கணெக்ஷன்
உள்பட கிழமேல் 40 அடி, தென்வடல் 60 அடி,
நான்கெல்லை விபரம்:

வடக்கு புறம் கச்சார் குளத்தெரு,
தெற்கு புறம் தோப்புத் தெரு, கிழக்கு புறம்
காரைக்கால் மெயின் ரோடு, மேற்கு புறம் ஷண்முக
முதலியார் வீடு (செங்கழனியின் தந்தையின் வீடு)□

4. It appears that after the decree, the decree holder being wife of Sengalani has filed an Execution Petition in E.P.No.02 of 2013 for the sale of charged property. It also appears from the records that, after the attachment, the petition mentioned property was auctioned on 13.09.2012 and subsequently the sale was duly confirmed on 15.11.2012. At this juncture, the petitioner herein who is the brother of Sengalani/judgment debtor has filed an application under Section 47 of C.P.C on the ground that the petition



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mentioned property has already been settled in his name by virtue of settlement deed dated 26.04.2011, and that the survey numbers of the suit property has been wrongly mentioned in the Execution Petition. Therefore, he prayed for an adjudication of his claim and to set aside the sale.

5. In the said application, the Decree Holder as well as the Auction Purchaser has filed a counter statement disputing the change of petition mentioned property, and has also mentioned that in view of the charge decree dated 30.11.2006, the subsequent settlement deed executed by the judgment debtor (Sengalani) in the name of the petitioner who is the brother, the third party in the proceedings, will be no way affected by the sale which had been conducted by the Court.

6. After considering on either side, the learned trial Judge has rejected the claim petition filed under Section 47 of C.P.C on the ground that the petition filed under Section 47 of C.P.C by the 3rd party is not maintainable, and has also found that even according to the petitioner herein, the petition mentioned property and the property which was auctioned are one and the same and dismissed the application.



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7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. Now the short point to be decided in the application is whether there is any justification for the petitioner to file application under Section 47 of C.P.C. As rightly observed by the learned trial Judge, application under Section 47 of C.P.C can be filed only between the parties. For easy reference Section 47 C.P.C is extracted hereunder:

“47. Questions to be determined by the Court executing decree (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) (Omitted by Amendment Act, 1976)

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.”



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9. Therefore, admittedly, the petitioner is not a party to the proceedings and he is only the brother of the judgment debtor. According to him, the property was settled in his favour. As rightly observed by the learned trial Judge, when there was a charge decree on 30.11.2006, the very execution of sale deed is contrary to the charge decree. The petitioner cannot have any better title beyond the charge decree.

10. Apart from these two aspects, yet another pertinent issue which has been raised by the petitioner is that, in the suit, while referring the description of property, the door number has been mentioned as 2/21 and Old survey No. 195/1, new Survey No.402/32. However, in the execution petition, contrary to the same, a different survey numbers of the property has been mentioned in the execution petition. And, that property alone sold. The description of property mentioned in execution petition is as follows:

“திருவிடைமருதூர் திருநாகேஸ்வரம் கிராமம்,
கச்சாரகுலம் தெரு.டோர் நம்பர் 2/21, புல எண் 168/2
(பழைய சர்வே நம்பர் 402 /32) மாடி வீடு கொல்லை
எலக்ட்ரிக் கனெக்ஷன் உள்பட கிழமேல் 40 அடி



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தென்வடல் 60 அடி. நான்கெல்லை விபரம்: வடக்கு
புறம் கச்சார் குளத்தெரு, தெற்கு புறம் தோப்புத்
தெரு, கிழக்கு புறம் காரைக்கால் மெயின் ரோடு,
மேற்கு புறம் வண்ணமுக முதலியார் வீடு.□

11. As per the above reference, there is some difference in respect of the survey number in the execution petition. The Survey number has been referred as S.No.168/2. However, as a matter of fact the old survey number has also been referred in the execution petition. Apart from that, the four boundaries mentioned in the decree has been exactly mentioned in the execution petition. Curiously, when the petitioner was cross examined, he, himself has admitted that there is no difference between the petition mentioned property and the property which was purchased by the auction purchaser. Therefore it is apparent that there is no difference between the suit mentioned property and the property brought to auction.

12. Therefore, this Court could not find any infirmity or illegality in the auction took place on 13.09.2012. Thus, this Court could not find any scope for interference of the well considered order of the learned trial Judge.



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13. In the result , this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No

Index : Yes / No

Internet : Yes / No

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To

1. The Principal District Munsif Court,
Kumbakonam, Thanjavur District.



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C.KUMARAPPAN,J.

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