

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM

THE HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P(PD)No.3116 of 2013

Ayyasami

...Revision Petitioner/
3rd Respondent

Vs.

1. Fathima Begam ...1st Respondent/1st Petitioner
2. H.Shajahan ...2nd Respondent/Proposed party
3. Ramavelu ...3rd Respondent/1st Respondent
4. Allapitchai ...4th Respondent/2nd Respondent

Civil Revision Petition filed under Section 115 CPC. against the order and decreetal order, dated 10.06.2013, made in E.A.No.375 of 2012, in O.S.No.147 of 2004, on the file of the Principal District Munsif Court, Kallakurichi.

For Revision Petitioner : Ms.K.Jenitha

For Respondents 1 and 2 : Mr.P.Valliappan

For Respondents 3 and 4 : Notice served

सत्यमेव जयते
O R D E R

Challenging the fair and final order, dated 10.06.2013, passed in E.A.No.375 of 2012, in O.S.No.147 of 2004, on the file of the Principal District Munsif Court, Kallakurichi, the auction purchaser has filed this Civil Revision Petition.

2. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for first and second respondents.

3. The plaintiff filed the Suit in O.S.No.147 of 2004, for recovery of money. The said suit was decreed on 06.03.2007. Pursuant to the said decree, the plaintiff/decreed-holder filed an Execution Petition, viz., E.P.No.127 of 2008, in which, the property not belonging to the defendant was brought to sale and the revision petitioner herein was the successful bidder in the auction. Thereafter, the first respondent herein filed an Execution Application under Order xxi, Rule 90 CPC, viz., E.A.No.266 of 2011, to set aside the sale made in favour of the revision petitioner. Since the husband of the first respondent is in Foreign Country, she filed E.A.No.375 of 2012, to implead her husband as the second petitioner in E.A.No.266 of 2011.

4. Admittedly, the suit was filed by the plaintiff on 15.10.1999 and the second respondent purchased the property on 20.10.1999 under a registered sale deed. The plaintiff obtained an order of attachment before judgment in respect of the suit property on 04.01.2004. It is also not in dispute that the respondents 1 and 2 are not parties to the suit proceedings. Thus, from the above, it is amply clear that, on the date, when the order of attachment before judgment was passed, the defendant, viz., the fourth respondent herein was not the owner of the property. The property belonging to the second respondent, who is not party to the suit proceedings was attached in the suit proceedings. Subsequently, the property was also brought to sale and sold in a Court auction and it was purchased by the revision petitioner herein. Now, in order to set aside the sale, the second respondent's wife, who is the first respondent herein filed E.A.No.266 of 2011, under Order xxi, Rule 90 CPC. Subsequently, she filed application in E.A.No.375 of 2012, to implead her husband, who is the owner of the property in dispute, as second petitioner in E.A.No.266 of 2011.

5. Therefore, it cannot be stated that the second petitioner has no locus standi to contest the application filed under Order xxi, Rule 90 CPC, in accordance with law. The second respondent, being the owner of the property, has every right to contest the application in accordance with law. In such circumstances, the second respondent is a proper and necessary party for proper adjudication of the application in E.A.No.266 of 2011. Taking into consideration of all these aspects, the Executing Court rightly allowed the Application in E.A.No.375 of 2012, and I do not find any error or illegality in the order passed by the Trial Court.

6. Hence, the Civil Revision Petition is dismissed as being devoid of merits. However, it is open to the Executing Court to decide the application in E.A.No.266 of 2011, on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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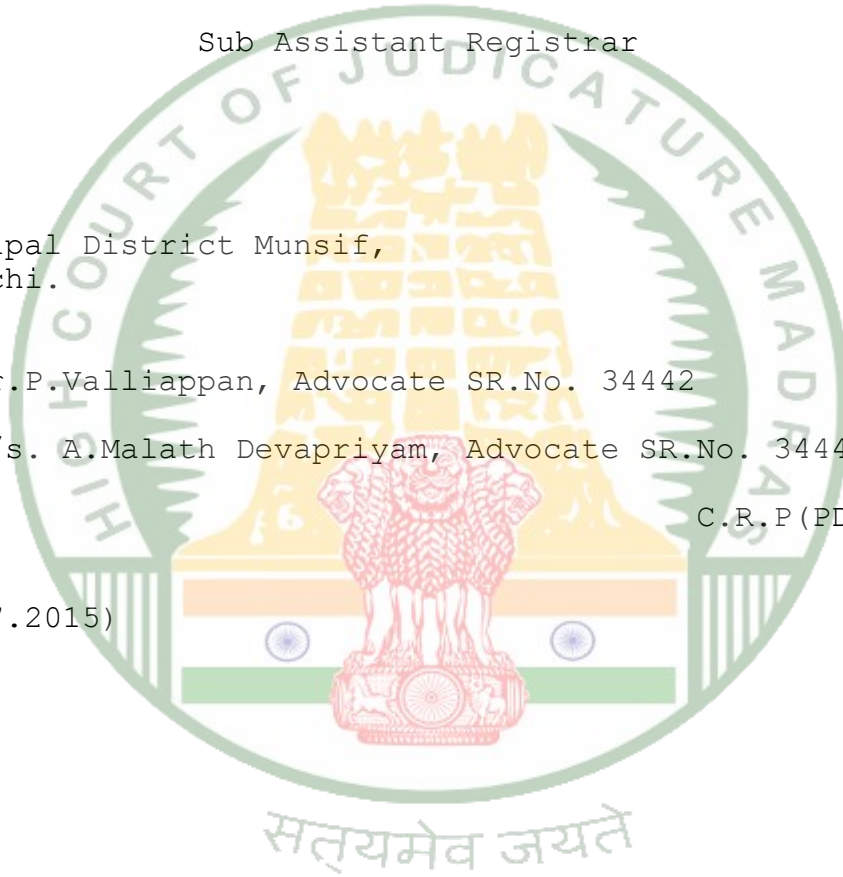
The Principal District Munsif,
Kallakurichi.

1 CC to Mr.P.Valliappan, Advocate SR.No. 34442

1 CC to M/s. A.Malath Devapriyam, Advocate SR.No. 34441

C.R.P(PD)No.3116 of 2013

BVR (CO)
PSI (22.07.2015)



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