



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2015

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (NPD) No.1097 of 2014

and

M.P. (MD) No.1 of 2014

Balammal

.. Petitioner/Petitioner
Respondent/Respondent

Vs.

1. A.Nageshwaran

... 1st Respondent/1st Respondent/
2nd Respondent/Petitioner

2. Ramar

... 2nd Respondent/Respondent/
Petitioner/Auction Purchaser

Prayer: Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the rejection Order passed by the learned District Munsif Court of Theni, dated 30.04.2014 in unnumbered E.A.No.... of 2014 in E.A.No.17 of 2013 in E.P.No.46 of 2010, on the file of the learned District Munsif of Theni District.

For Petitioner : Mr.V.Nagendran
For Respondents : Mrs.J.Padmavathi Devi for R.1

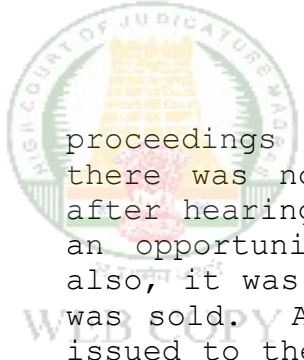
: Mr.P.T.S.Narendravasan for R.2

ORDER

Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. The Judgment Debtor in a suit for recovery of money has filed an unnumbered E.A. for staying of the delivery of the property in E.A.No.17 of 2013 in E.P.No.46 of 2010. On 15.02.2005, an exparte decree for money was passed based on the mortgage. On 30.11.2007, a final decree was also passed. Thereafter, E.P.No.46 of 2010 has been filed by the Decree Holder to sell the suit property. The Court auction sale was conducted on 14.11.2011. The second respondent herein was the highest bidder in the sale. On 27.03.2012, the sale was also confirmed, before E.A.No.17 of 2013 was filed by the Court auction purchaser for delivery of the property and the said application, after contest, was allowed on 10.03.2014.

3. While so, the Judgment Debtor filed the stay application in E.A.No.11 of 2013, for staying of delivery of the property. The said application was dismissed on 07.02.2014, on the ground that the Civil Revision Petition filed by the Judgment Debtor challenging the execution



proceedings dated 27.03.2013 was dismissed by this Court and further, there was no proceedings pending, as the final decree was passed only after hearing both parties and delivery was also ordered only after giving an opportunity to the Judgement Debtor and in the auction proceedings also, it was only with the knowledge of the Judgement Debtor, the property was sold. After confirmation of the sale, the sale certificate was also issued to the auction purchaser. Therefore, there is nothing to be stayed in the execution proceedings. Hence, it was dismissed. Now the auction purchaser took delivery of the property. The unnumbered E.A. has been filed to stay the further proceedings.

4. It is the contention of the learned Counsel for the petitioner that the petitioner has filed the application to set aside the exparte decree itself, which was numbered as I.A.No.222 of 2014 and it is also pending and therefore, the petitioner wanted the execution proceedings to be stayed.

5. The said application was returned by the District Munsif, Theni, on the ground that the petitioner herein had not challenged the dismissal of the stay application in I.A.No.11 of 2013, besides C.R.P.SR.No.20147 of 2013 was filed challenging the delivery of the property. But the Civil Revision Petition was dismissed and there was no further appeal by the revision petitioner.

6. In these circumstances, the second application for staying of further proceedings in E.P.No.46 of 2010 is not maintainable. Accordingly, the District Munsif also rejected the application, even without numbering the application. In the above said facts and circumstances of the case, I do not find any infirmity or irregularity in the order passed passed by the trial Court.

7. Accordingly, the Civil Miscellaneous Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. No costs.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The District Munsif, Theni.

Copy to

The Section officer,

VR Section, Madurai Bench of Madras High Court, Madurai.

+1cc to Mrs.J.Padhmavathi Devi, Advocate in SR.No. 9329

+1cc to M/S. V.Nagendran, Advocate in SR.No. 9123.

TS/03.03.2015/2P-5C