



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 2/2/2015

C O R A M

THE HONOURABLE Ms. JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.141 of 2015

WEB COPY

Y. Baskar ..Petitioner/Petitioner/3rd Party
Vs.
1. P. Chithambaram ..1st Respondent/1s Respondent/
Auction Pruchaser
2. V. Yoseppu Ponniah Nadar ..2nd Respondents/2nd Respondent/
Judgment Debtor

Petition filed under Article 227 of the Constitution of India to call for the records and to set aside the fair and decreetal order passed in unnumbered E.A.No.--- of 2014 in E.A.No.619 of 2012 in E.P.No.56 of 2007 in O.S.No.224 of 2002 on the file of the Principal Subordinate Judge, Tenkasi dated 1/7/2014 by allowing this Civil Revision Petition.

For petitioner ... Mr.H.Velavadas
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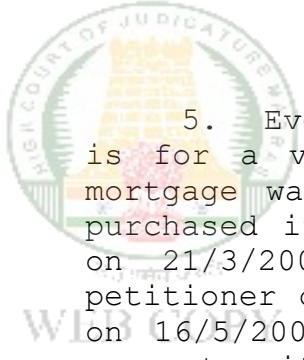
O R D E R

The third party in the suit proceedings in O.S.No.224 of 2002 on the file of the Principal Sub-Court, Tenkasi is the revision petitioner herein.

2. This Civil Revision Petition has been filed against the rejection of an un-numbered E.A.No.--- of 2014 in E.A.No.619 of 2012 in E.P.No.56 of 2007 filed under Order 21 Rule 58 and Rule 47 of the Code of Civil Procedure.

3. The case of the petitioner is that he had purchased the suit property on 16/5/2015 by virtue of a sale deed from one Anbazhagan. The said Anbazhagan, in turn had purchased the same in a alleged Court auction pursuant to the decree in O.S.No.5 of 2001 on the file of the District Munsif, Tenkasi and the date of his purchase was on 21/3/2003. The present suit is filed for recovery of money based on a mortgage and the suit was decreed on 6/1/2004 and a final decree was passed on 21/7/2004. The revision petitioner is the son of the second respondent herein, who is the judgment debtor in the suit.

4. Pursuant to the final decree passed, the suit property was brought to sale and the same was purchased by the first respondent herein on 30/7/2009 in the above E.P proceedings. After the sale deed was executed in favour of the first respondent, he had also filed E.A.No.619 of 2012 for delivery of the property. At this juncture, the present application has been filed by the third party claiming to have purchased the property bona fide from one Anbazhagan. As stated earlier, the petitioner is not a person, who has purchased the property without knowledge because he is the son of the second respondent herein, who is the judgment debtor in the suit.



5. Even presuming for a moment that the alleged sale in his favour is for a valid consideration, the present suit which is based on a mortgage was filed on 1/10/2002, whereas the petitioner claims to have purchased it from one Anbazhagan, who had purchased it in Court auction on 21/3/2003 which is pending the present suit. Thereafter, the petitioner claims to have purchased the property from the said Anbazhagan on 16/5/2005 by which time, even the final decree was passed in the present suit. Therefore, the petitioner does not have any right over the property and he cannot claim himself to be the purchaser without notice as he is the son of the second respondent, who is the judgment debtor in the suit. If the third party had any right in the property attached, he cannot maintain the application under Order 21 Rule 58 of the Code of Civil Procedure.

6. The revision petitioner, who has purchased the property only on 16/5/2005 contends that his vendor had purchased the property as early as 21/3/2003. However, going by the dates, the present suit has been laid even before the purchase by the said Anbazhagan. Therefore, the purchase by the petitioner's vendor itself is hit by the Doctrine of lis pendens. Besides when the petitioner is not a party to the proceedings, he cannot maintain such an application under Rule 47 of the Code of Civil Procedure. Hence the trial Court was right in rejecting the same even without numbering. I find there is no infirmity or material irregularity in the order of the Principal Subordinate Judge, Tenkasi and the same is correct.

7. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge, Tenkasi.

+1CC to M/s.H.Velavadhas, Advocate in SR.4563

C.R.P.NPD (MD) No.141 of 2015
2/2/2015

mvs

PBK 13/03/2015 ::2P-3C: