



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.10.2015

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CORAM:

THE HONOURABLE MR.JUSTICE **M.DURAISWAMY**

Civil Revision Petition (MD).Nos.2267 and 2194 of 2015

C.R.P. (MD) .No.2267 of 2015

Gopalakrishnaraja . . . Petitioner/1st Respondent/
Petitioner/Plaintiff

versus

1.Ligathali
. . . 1st Respondent/Petitioner/Respondent/Defendant.

2.V.Thalavai Mani
. . . 2nd respondent/2nd respondent/auction purchase/ not a
party

C.R.P. (MD) .No.2194 of 2015

V.Thalavai Mani
. . . Petitioner/2nd respondent/auction purchaser/
not a party

versus

1.Gopalakrishnaraja
. . . 1st respondent/1st respondent/petitioner/plaintiff

2.Liagathali
. . . 2nd respondent/petitioner/respondent/defendant

Prayer: Civil Revision Petitions are filed under Section 115 of CPC to set aside the order passed in E.A.No.995 of 2011 in E.P.No.1 of 2003 in O.S.No.215/2001 on the file of Principal Sub Court, Thenkasi.



For Respondents :Mr.M.Suresh for R1 in CRP(MD).No.2194/2015
and for Petitioner in CRP(MD).No.2267/2015

Mr.R.Subramanian for R2 in CRP(MD).No.2194/2015
and for 1st Respondent in CRP(MD).No.2267/2015

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COMMON ORDER

Challenging the order passed in E.A.No.995 of 2011 in E.P.No.1 of 2003 in O.S.No.215 of 2001 on the file of Principal Sub Judge, Tenkasi, the plaintiff preferred the civil revision petition in CRP(MD) No.2267 of 2015 and the auction purchaser filed CRP(MD).No.2194 of 2015.

2. The plaintiff filed the suit O.S.No.215 of 2001 for recovery of money Rs.71,749/- together with interest. The suit was decreed on 21.08.2002. Pursuant to the decree passed in the suit, the plaintiff filed an execution petition in E.P.No.1 of 2003 to bring the property belonging to the defendant for sale. On 01.08.2011, the property was sold to the petitioner in CRP(MD).No.2194 of 2015.

3. According to the learned counsel for the auction purchaser, the auction purchaser was the successful bidder of the property at Rs.1,11,600/- Thereafter, the defendant filed an application under Order 21 Rule 89 CPC to set aside the sale on the ground that he is depositing the entire decree amount together with 5% foundation charges. Accordingly, the defendant deposited a sum of Rs.36,825 to the credit of E.P.No.1 of 2003. The petitioners in both the civil revision petitions contended that the defendant did not comply with the provisions of Order 21 Rule 89 CPC by depositing the entire decree amount together with 5% poundage charges and therefore, the application filed by the defendant is liable to be rejected. The Execution Court taking into account, the deposit made by the defendant, set aside the sale held on 01.08.2011 and allowed the application filed by the defendant under Order 21 Rule 89 CPC in E.A.No.995 of 2011 on 02.04.2012. Since the revision petitioners contended that the defendant had not deposited the amount as contended by him, the Execution Court should have dismissed the application under Order 21 Rule 89 CPC.

4. When the matter came up for hearing today, the learned counsel appearing for the respondent filed a memo, wherein the first respondent/defendant has stated that he had deposited a sum of Rs.36,825/- on 05.09.2011 under Challan No.585 to the credit of E.P.No.1 of 2003 on the file of the Principal District Munsif, Tenkasi. Further, he has stated that the said entry is entered in the court's ledger No.70 page No.L.F.80 maintained by the Court of the year 2011-2012.



5. It is needless to say that the condition for depositing the decree amount and 5% poundage is a condition precedent for maintaining an application under Order 21 Rule 89 CPC. Since the first respondent/defendant had stated that he had deposited the amount on 05.09.2011 and pursuant to which the Execution Court had allowed the application and set aside the sale, recording the memo filed by the first respondent/defendant, I am of the view that the civil revision petitions filed by the plaintiff and the auction purchaser are liable to be dismissed. Accordingly, the same are dismissed.

6. Since the amount deposited by the defendant is lying to the credit of E.P.No.1 of 2003, the plaintiff is at liberty to withdraw the decree amount from the said deposit. If the auction purchaser had deposited any amount towards the sale price, at the time of auction, he is also at liberty to withdraw the said amount from the credit of E.P.No.1 of 2003.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Tenkasi.

2.The Principal District Munsif, Tenkasi

+1cc to Mr.M.Suresh, Advocate Sr.No. 62428

+1cc to Mr.M.Gnanagurunathan, Advocate Sr.No. 62429

+2cc to Mr.R.Subramani, Advocate Sr.No. 62053

jikr

AA/SKS/30.10.2015/3p-7c

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