



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 3/3/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD (MD) No.296 of 2015

1. Rajendran
2. Natarajan
3. Selvaraj
4. Vasantha
5. Ambika
6. Suseela

...

Petitioners/Third Parties
Vs

1. Johnrose
2. Vijayan
3. Palaiyan Nadar

...

Respondents/Auction Purchaser/
Defendant/Plaintiff

Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29/1/2015 passed in E.A.No.120 of 1997 in O.S.No.209 of 1995 on the file of the Principal District Munsif, Kuzhithurai.

For petitioners

... Ms.J.Anandhavalli

For respondent No.1

... Mr.M.S.Ramakrishnadoss

O R D E R

The third parties in the Execution Petition have filed this Civil Revision Petition against the order directing delivery of possession in E.A.No.120 of 1997 in O.S.No.209 of 1995.

2. The petitioner in E.A.No.120 of 1997 is the Court auction purchaser in the suit. He had purchased the suit property on 18/3/1997 and obtained a sale certificate. Pursuant to the same, he had filed E.A. for taking delivery of possession. One Kamalammal, mother of the defendant had filed an obstruction petition with an intention to harass the purchaser alleging that she had the right of residence in the suit property for her life. According to her, the suit property belong to her husband Kamalan Nadar. Her children entered into a partition in the year 1986. In the said partition, the plaint property was shown as schedule 'D' and it was allotted to her son Vijayan. However, the said Kamalammal had the right of residence in the suit property till her life. Therefore, she had claimed that she cannot be dispossessed from the suit property.

3. The contention of the Court auction purchaser is that the said Kamalammal knowing pretty well that the execution proceedings were pending, by keeping quite had not taken any action till the delivery was ordered. In fact, Kamalammal herself had filed a petition in E.A.No.159 of 1997 which came to be dismissed. Against which she preferred C.M.A.No.20 of 1998 which was also dismissed on 4/8/1999. Aggrieved by the dismissal of the C.M.A., she had also preferred C.M.S.A.No.42 of 1999 before this Court which also was dismissed on 4/1/2000.

4. Not stopping with that, the said Kamalammal also had filed another Civil Suit No.276 of 1997 for injunction which was also dismissed



on 23/12/1999 and the appeal suit in A.S.No.10 of 2000 also met the same fate on 17/4/2001. Having failed in all her attempts to stall the execution, the said Kamalammal had arranged to file the suit for partition through her daughter and the same was also dismissed.

5. Whiles, now the sons of the said Kamalammal is obstructing and objecting the delivery of possession, contending that there were irregularities in the Court auction sale. Admittedly, the Court auction sale was confirmed and even sale certificate was issued and the parties were having knowledge about each of the proceedings before this Court and having allowed the sale to reach the finality cannot now turn around to contend that the sale suffers from irregularity.

6. The learned District Munsif, Kuzhithurai, after considering all the above said aspects dismissed the objections of the first respondent herein/petitioner therein and allowed the application for delivery and fixed the date for delivery on 20/2/2015. The said order is now challenged before this Court.

7. The main objection of the petitioners is regarding the sale procedure which as held earlier cannot be canvassed after the sale had become final.

8. The learned counsel appearing for the Caveator, who is the auction purchaser had produced the certified copy of the delivery list dated 16/2/2015 wherein in E.A.No.120 of 1997 in O.S.No.209 of 1995 pursuant to the order of the Court, the petition mentioned properties were taken possession from the defendant and handed over possession to the auction purchaser in the presence of Sub-Inspector of Police, Arumanai Police Station, Kanyakumari District. The certified copy of the same was produced by the Caveator. The said copy was objected to by the petitioners calling it a paper delivery. As the revision itself is challenging only the order of delivery and now the delivery itself has been effected which has been evidenced by the certified copy produced, this Civil Revision Petition deserves dismissal.

9. In the result, this Civil Revision petition is dismissed as no merits. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif, Kuzhithurai.

+1cc to MR.N.S.RAMAKRISHNA DASS, ADVOCATE IN SR : 10176

Mvs

SR : 11.03.2015 : 2p/3c