



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/3/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD (MD) No.677 of 2011

1. Michael Ammal
2. Thomas ...Petitioners/Petitioners/Respondents/Respondents

Vs

1. Thoomas ...1st Respondent/1st Respondent/petitioner/Petitioner
2. George ...2nd Respondent/2nd Respondent/Auction Purchaser

Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order passed in E.A.No.91 of 2010 in E.P.No.17 of 2008 dated 21/10/2010 on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri.

For petitioners ... Mr.F.X.Eugene

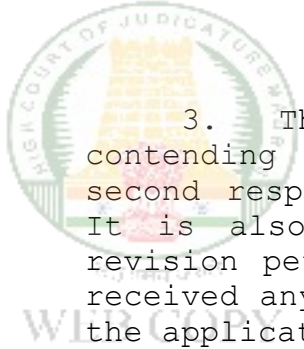
For respondents ... No appearance for R.1

Mr.V.Meenakshisundaram
for Mr.D.Nallathambi
for R.2.

O R D E R

The defendants, who suffered the decree in O.S.No.139 of 2006 had filed the above revision challenging the dismissal of petition under Order 21 Rule 89 of the Code of Civil Procedure in E.A.No.91 of 2010 in E.P.No.17 of 2008.

2. The first respondent herein, who is the plaintiff in the suit had filed O.S.No.139 of 2006 for recovery of money based on the promissory note and obtained a decree on 18/12/2007. Pending suit, the suit property was attached before judgment on 6/9/2006. After the suit was decreed, it was brought to sale on 24/6/2010. The second respondent herein was the successful auction purchaser in the proceeding having purchased the same for Rs.90,000/-. The revision petitioners claim that they were not in station on the date of the sale. Hence they were not aware of the auction. It is claimed that the property brought to auction is a dwelling house and that the petitioners does not have any other property except the properties sold in the auction. Hence they remitted a sum of Rs.17,758/- through the counsel for the first respondent and the poundage amount and commission also paid to the counsel for the second respondent and prayed for setting aside the sale and not to confirm the sale dated 24/6/2010.



3. The said application was resisted by the auction purchaser contending that he is a bona fide purchaser of the suit property. The second respondent had remitted the entire sale amount on the same day. It is also contended that he had not received any amount from the revision petitioner/judgment debtor. The respondents also denied having received any amount through their counsel. Hence prayed for dismissal of the application.

4. After hearing the parties, the learned District Munsif-cum-Judicial Magistrate, Sivagiri had dismissed the application.

5. Now, the only question that has to be decided is whether the order passed by the execution Court is correct.

6. The date of decree, the Court auction and the sale are all admitted facts by both the parties. It is also admitted that the sale was confirmed on 21/10/2010 and on 30/12/2010, the sale certificate was issued. The application is filed by the judgment debtor under Order 21 Rule 89 of the Code of Civil Procedure which is an application to set aside the sale on deposit.

7. It is useful to extract Order 21 Rule 89 of the Code of civil Procedure and the same reads as follows:-

Application to set aside sale on deposit - (1)
Where immovable property has been sold in execution of a decree any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person may apply to have the sale set aside on his depositing in Court -

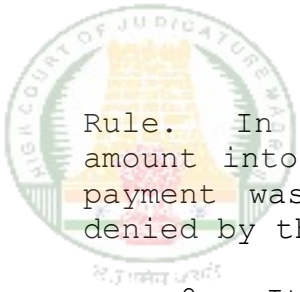
a. for payment to the purchaser, a sum equal to five per cent of the purchase money, and

b. for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2). Where a person applies under Rule 90 to set aside the sale of his immovable proeprty, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3). Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

8. The above Rule mandates any applicant under the provision to set aside the sale has to deposit in Court the payment as prescribed under



Rule. In the present case, the revision petitioner had not deposited amount into Court. Even in the affidavit, it is stated by him that the payment was made to the counsel for the purchaser, which however is denied by the Court auction purchaser.

9. It is also further stated by the revision petitioners that the decree amount was given to the learned counsel for the decree holder which is also not established either by oral or documentary evidence. When the provisions specifically mandates the deposit only into Court, the revision petitioners cannot pay to the learned counsel for the auction purchaser or of the decree holder to suit their convenience. Besides, they had also not let in any oral or documentary evidence to evidence the deposit. In fact, after filing of the above application, the sale was confirmed on 21/10/2010 and the sale certificate was also issued on 30/12/2010. The revision petitioners having not satisfied with the condition prescribed in the Rule before making an applicant is not entitled to any order to set aside the sale. The said application filed by them was rightly dismissed by the execution Court which does not warrant any interference.

10. In the result, this Civil Revision Petition is dismissed, confirming the order passed by the District Munsif-cum-Judicial Magistrate, Sivagiri in E.A.No.91 of 2010 in E.p.No.17 of 2008. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate, Sivagiri.

+1cc to MR.D.NALLTHAMBI, ADVOCATE IN SR : 11902

+1cc to MR.F.X.EUGENE, ADVOCATE IN SR : 12247

Mvs

SR : 19.03.2015 : 3p/4c

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11/3/2015