



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2664 of 2014 (NPD)

and

M.P (MD) No.1 of 2014

and

C.M.P (MD) No.11221 of 2016

R.Vinayagamoorthy

...Petitioner/Petitioner.
Claimant-Obstructor/Not a party

Vs.

1.K.Ponnusamy

...Respondent/Respondent/
Petitioner/Plaintiff

2.Subatradevi

3.Ganesan

...2nd & 3rd respondents/2nd & 3rd
respondents/Defendants

4.Saravanan

... Auction Purchaser

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order, dated 03.09.2014 made in un-numbered E.A.No..... of 2014 in E.P.No.20 of 2013 in O.S.No.108 of 2006, on the file of the Subordinate Judge, Srivilliputhur.

For Petitioner : M/s.S.Rajasekar

For R2 : Mr.P.Venkatasubramanian

For R3 : Mr.V.Sitharanjandas

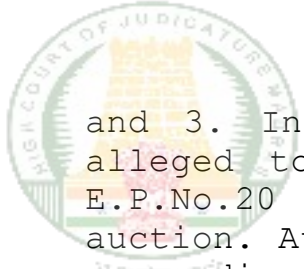
For R4 : M/s.N.Krishnaveni

R1 Dismissed vide order date 24.08.2015

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order, dated 03.09.2014 made in un-numbered E.A.No..... of 2014 in E.P.No.20 of 2013 in O.S.No.108 of 2006, on the file of the Subordinate Judge, Srivilliputhur.

2.The petitioner, who is the third party in E.P.No.20 of 2013 before the Sub Court, Srivilliputhur, filed un-numbered E.A. Of 2014 for declaration that the suit property absolutely belongs to the petitioner and to cancel the Court auction held on 25.04.2014. The petitioner contended that the petitioner has purchased the property by the deed of sale, dated 15.07.1994 bearing document No.1970/1994. There are legal proceedings pending against the original owner and Dulipsingh Periyannayagam, his wife and his legal heirs. The petitioner has contended that the first respondent colluded together with respondents 2 and 3 obtained the ex-parte decree in O.S.No.108 of 2006 against the respondents 2



and 3. In view of the said decree, the fourth respondent has alleged to have purchased the suit property in Court auction. E.P.No.20 of 2013 has been filed for confirmation of Court auction. At that stage only, the petitioner came to know that suit proceedings in O.S.No.108 of 2006 filed by the first respondent against the respondents 2 and 3. Immediately, he filed E.A.No. Of 2014 for the relief mentioned above.

3.The learned Judge considering the facts and pendency of various proceedings and failure on the part of the petitioner that he has not obtained any favourable orders in legal proceedings and considering the judgment reported in **2004(1) L.W. 102 (Radha Mandhiri vs. Suguna and others)**, rejected the application filed by the petitioner.

4.Against the said order of rejection, the petitioner has filed the present Civil Revision Petition.

5.The learned counsel for the petitioner submitted that the learned Judge failed to see that the decree holder attached the property belonging to the petitioner and he is in possession and enjoyment of the said property. The learned Judge failed to see that the decree holder colluded with judgment debtor and obtained an ex-parte decree and the judgment debtors are not contesting the suit. The learned Judge erroneously dismissed the claim petition filed under Section 47 of C.P.C., and failed to see that the judgment debtors have no right over the property.

6.Per contra, the learned counsel for the respondents 3 & 4 submitted that already the Civil Revision Petition is dismissed as against the first respondent, who is the decree holder and therefore, the Civil Revision Petition is liable to be dismissed against the other respondents also. They further submitted that the learned Judge properly appreciated the facts and rejected the claim petition filed by the petitioner without numbering the same. The relief sought for by the petitioner, is not maintainable, after court auction. The fourth respondent is the bonafide purchaser in Court auction and only with a view to prevent him from enjoying the property purchased by him in the court auction, the claim petition is filed by the petitioner.

7.The learned counsel for the third respondent further submitted that the third respondent is the power agent of the original owner second respondent. The third respondent borrowed a sum of Rs.1,00,000/- from the first respondent and suit property was given as a Security. The respondents 2 and 3 could not pay the money and therefore, the first respondent filed a suit for recovery of money and obtained decree and executed the decree by sale of the suit property. After decree is satisfied in full, the respondents 2 and 3 are entitled to balance amount. The petitioner



has no title or right over the suit property and the learned Judge has rightly rejected the claim petition filed by the petitioner.

8.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 2 to 4 and perused the materials available on record.

9.From the materials, it is seen that the first respondent has obtained the decree against the respondents 2 and 3 in O.S.No.108 of 2006 on 07.09.2006 and to execute the said decree the property given as security was sold in the court auction and the same was purchased by the fourth respondent. In view of the court auction, the petitioner cannot challenge the attachment of the property, after the property being sold in court auction. A reading of evidence filed by the petitioner in the un-numbered claim petition, there are number of legal proceedings in respect of the suit property pending and the petitioner is also party to the said litigation. The learned Judge has rightly held that the petitioner has not obtained any favourable orders in the legal proceedings initiated by him. Further, execution court cannot decide the issue that suit property belongs absolutely to the petitioner and consequently, cannot set aside the court auction, dated 24.04.2014. In the circumstances, the learned Judge has rightly dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court.

10.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, M.P(MD)No.1 of 2014 is also dismissed.

11.In view of dismissal order passed in C.R.P(MD)No.2664 of 2014, C.M.P(MD)No.11221 of 2016 is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Srivilliputhur.

Copy To
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.T.Lajapathi Roy, Advocate in SR.No.82195
+1 cc to M/s.V.Sitharanjandas, Advocate in SR.No.81764
+1 cc to M/s.N.Krishnaveni, Advocate in SR.No.82033

Am

<https://hcmisecm/sdpr/hcmisecm/01.2017> : 3P-6C

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19.12.2016