



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 22.06.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(MD)No.1231 of 2016
and C.M.P.(MD)No.5991 of 2016

Alagappan

.. Petitioner/Respondent/Respondent/
Respondent/Petitioner/Plaintiff

vs.

1.Mercy

.. 1st Respondent/Petitioner/Petitioner/
Claim Petition 3rd Party

2.Tamilarasi Subbiah

3.M.A.Subbiah

4.M.A.Vairamani

..Respondents 2 to 4/Respondents
2 to 4/Respondents 2 to 4/
Respondents 1 to 3/Defendants

5.Valliammai

.. 5th Respondent/5th Respondent/
5th Respondent/Auction Purchaser

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 06.04.2016 made in E.A.No.25 of 2016 in E.A.No.9 of 2016 in E.A.No.143 of 2009 in E.P.No.3 of 2005 in O.S.No.102 of 1999 on the file of the Sub Court, Virudhunagar.

For Petitioner

: Mr.T.R.Subramanian

ORDER

This revision is directed against the order passed in E.A.No.25 of 2016 in E.A.No.9 of 2016 in E.A.No.143 of 2009 in E.P.No.3 of 2005 in O.S.No.102 of 1999 by the Sub Court, Virudhunagar.

2. The petitioner had filed a suit in O.S.No.102 of 1999 against the respondents 2 to 4 for recovery of money based on mortgage. The preliminary decree in the suit was passed on 16.03.2000 and final decree was passed on 12.01.2001. Based on the decree, the petitioner filed an execution petition in E.P.No.3 of 2005 and the property of the judgment debtors were sold in the auction conducted on 23.09.2008.

3. The first respondent, who is the third party to the proceedings, filed an application in E.A.No.9 of 2016 under Order 21 Rule 97 of C.P.C., claiming right over the property. When the petition was pending,



she filed the present application in E.A.No.25 of 2016 to amend the date of sale as 23.09.2008 instead of 20.03.2008. The application was allowed by the Executing Court. Challenging the order, the present revision is filed.

4. Mr.T.R.Subramanian, learned counsel appearing for the petitioner would submit that the property was sold by the Court on 23.09.2008; that the auction purchaser had already deposited the sale amount in the Court and also took delivery of the property and the first respondent filed the application claiming right over the property by the sale deed, dated 09.11.2006 and therefore, the application filed under Order 21 Rule 97 of C.P.C., is not maintainable. It is further contended that the evidence in the application was almost over and at that juncture, the amendment application was filed only to drag on the proceedings.

5. It is not in dispute that the property was sold in auction held on 23.09.2008 and the application filed under Order 21 Rule 97 of C.P.C., is also pending. The maintainability of the obstruction application cannot be decided in this revision at this stage. In view of the above, I do not find any illegality or irregularity in the order impugned in the revision.

6. In the result, this Civil Revision Petition is dismissed. However, the Sub Court, Virudhunagar is directed to dispose of the application in E.A.No.9 of 2016 in E.A.No.143 of 2009 in E.P.No.3 of 2005 in O.S.No.102 of 1999 as expeditiously as possible preferably on or before 31.08.2016. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To
The Subordinate Judge,
Virudhunagar.

+1CC to M/S.T.R.Subramanian, Advocate, SR.No. 32104

C.R.P (MD) No.1231 of 2016
and
C.M.P (MD) No.5991 of 2016
22.06.2016

ps
AM/NGM.MP/SAR-III/05.07.2016/2P/3C