



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 14.12.2016
CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2501 of 2016

1.Kalarani
2.K.Merline Meeha .. Petitioners/Petitioners/Third Party/
Third Party

-VS-

1.John Sheeba .. 1st Respondent/1st Respondent/
Petitioner/Plaintiff
2.Chellam Nadar .. 2nd Respondent/2nd Respondent/
Respondent/Defendant

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to direct the Sub ordinate Judge, Padmanabhapuram to number the E.A.S.R.No.2366 of 2016 in E.P.No.66 of 2008 in O.S.No.49 of 2005 on the file of the Sub Court, Padmanabhapuram.

For Petitioners : Mr.T.Selvakumaran

O R D E R

The revision petitioners have filed the above Civil Revision Petition against the order of return, dated 21.09.2016 made in E.A.S.R.No.2366 of 2016 in E.P.No.66 of 2008 in O.S.No.49 of 2005 by the Sub Court, Padmanabhapuram.

2.According to the revision petitioners, they purchased the suit properties from the second respondent by two different sale deeds, both dated 05.10.2005, even before the money decree passed against the Judgment Debtor.

3.The first respondent filed a suit in O.S.No.49 of 2005 on the file of the Sub Court, Padmanabhapuram, against the second respondent for recovery of money. The second respondent filed written statement and contested the suit and trial commenced. The trial Court decreed the suit by Judgment and Decree, dated 04.04.2006.



4.The first respondent/decreed holder filed an application in E.P.No.66 of 2008 on the file of the Sub Court, Padmanabhapuram and brought the property for sale and possession was delivered to auction purchaser on 07.08.2016. In these circumstances, the revision petitioners filed the application under Order 21 Rule 97, 98, 99 and 151 C.P.C. However, the learned Judge returned the said application stating that "delivery of the attachment schedule property sold as per E.P.No.66 of 2008, has already been delivered to the auction purchaser/decreed holder as per E.A.No.833 of 2012 and the same has been recorded on 06.08.2016 itself and therefore, the present petition not to deliver the property is infructuous." Against the said order, the revision petitioners have come out with the present Civil Revision Petition.

5.The learned counsel for the revision petitioners submitted that as per Order 21 Rule 99 C.P.C., a person other than the Judgment Debtor is dispossessed of immovable property by Decree Holder or auction purchaser, the said person is entitled to maintain the application under Order 21 Rule 99 C.P.C. The Court has to adjudicate the said claim and prayed for allowing the Civil Revision Petition directing the learned Judge to number E.A.S.R.No.2366 of 2016.

6.Heard the learned counsel for the revision petitioners and perused the materials available on record.

7.The contention of the learned counsel for the revision petitioners is that the revision petitioners are claiming that they purchased the properties on 05.10.2005 from the second respondent/judgment debtor, even before the decree being passed against the judgment debtor on 04.04.2006. In these circumstances, the contention of the learned counsel for the revision petitioners has considerable force that application under Order 21 Rule 99 C.P.C is maintainable. Therefore, the learned Sub Judge, Padmanabhapuram, is directed to number the application in E.A.S.R.No.2366 of 2016 in E.P.No.66 of 2008 in O.S.No.49 of 2005, if it is represented by the revision petitioners and if it is otherwise in order, and decide the same on merits.

8.With these observations, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

The Subordinate Judge,
Padmanabhapuram.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate in SR No.80786

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14.12.2016

ps
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