



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.84 of 2016 (NPD)

Pandiammal .. Petitioner/Respondent/Defendant.

Vs.

1.Chellapandi .. 1st Respondent/Respondent/Petitioner/Plaintiff

2.M.Ganesan .. 2nd Respondent/2nd respondent/auction purchaser

PRAYER: Civil Revision Petition is filed under Section 115 CPC against the fair and decretal order dated 07.08.2015 and made in E.A.No.13 of 2015 in E.P.No.3 of 2008 in O.S.No.358 of 2004 on the file of the District Munsif Court, Nilakkottai.

For Petitioner:Mr.D.Senthil

ORDER

This revision is directed against the fair and decretal order dated 07.08.2015 and made in the execution application in E.A.No.13 of 2015 in the execution petition in E.P.No.3 of 2008 in O.S.No.358 of 2004 on the file of the learned District Munsif, Nilakkottai. The revision petitioner herein is the judgment debtor/defendant, whereas the first respondent is the decree holder/plaintiff and the second respondent is the auction purchaser.

2. It is manifested from the records that the first respondent had filed a suit in O.S.No.358 of 2004 on the file of the learned District Munsif, Nilakkottai as against the revision petitioner for recovery of a sum of Rs.26,633/- . Despite the strenuous contest made on behalf of the revision petitioner that suit was decreed as prayed for on 26.02.2007.

3. On the strength of the decree, the first respondent had taken out an execution proceedings in E.P.No.3 of 2008 either to realise the decree amount or to attach the petition mentioned property and to bring it for sale. It appears that the revision petitioner/judgment debtor had also filed his objection in the execution petition. However, the executing court had proceeded to allow the execution petition on 26.08.2010 and the property was ordered to be sold in Court auction.

4. Mr.D.Senthil learned counsel for the petitioner has drawn the attention of this Court at page no.44 of the typed set of papers produced along with the revision petition. Page no.44 contains the affidavit filed by the revision petitioner, wherein he has stated that he had paid a sum of Rs.10,000/- towards the part satisfaction of the decree amount. In this connection Mr.D.Senthil has also drawn the attention of this Court to page no.47 of the typed set of papers, which contains the endorsement made by the learned counsel for the decree holder before the executing court, which discloses that he had received a sum of Rs.10,000/- from the revision petitioner on 23.07.2013 and to that effect he had also made an endorsement. It also appears that the learned judge of the executing court had made an endorsement beneath the endorsement made by the learned counsel for the decree holder and signed and ordered the Execution

Petition to be called on 30.07.2013.

5. It is also revealed from the records that the second respondent had filed a counter statement to the petition, filed by the revision petitioner in E.A.No.13 of 2015, wherein he has stated that he had participated in the Court auction sale and he had also purchased the suit property for the total sale consideration of Rs.37,000/- as he had been the successful bidder in the auction and he had also deposited the entire sale proceedings before the executing Court.

6. Under this circumstance, the revision petitioner being the judgment debtor had filed an application in E.A.No.13 of 2015 wherein he has stated that he had already paid a sum of Rs.10,000/- towards the part satisfaction of the decree amount and subsequently he was ready to pay a sum of Rs.24,668/- along with a sum of Rs.1600/- to the auction purchaser, which is equivalent to 5% of the purchase money. In this connection he has filed two lodgement schedules before the executing court and he had also given an undertaking to make any more payment towards his loan in respect of the cost and interest not covered by the proclamation of sale. This application in E.A.No.13 of 2015 was resisted by the auction purchaser. But it is apparent from the records that the decree holder had not filed any counter. However, the executing court without considering all the above said facts and even without considering the part payment made by the revision petitioner/judgment debtor had simply proceeded to dismiss that application. It is also brought to the notice of this Court that the sale certificate is yet to be issued in favour of the auction purchaser.

7. Under these circumstances this Court finds that in order to meet the ends of justice, the petitioner may be directed to deposit the remaining balance of Rs.24,668/- along with 5% of the purchase money to the second respondent herein.

8. Mr.D.Senthil has also assured that the revision petitioner/judgment debtor is ready to deposit the remaining balance on 27.01.2016. Keeping in view of the above fact, this Court finds that the impugned order is liable to be set aside and the revision petition may be allowed.

9. Accordingly this Civil Revision Petition is allowed and the impugned order dated 07.08.2015 is set aside. The execution application in E.A.13 and 2015 will be allowed on deposit of Rs.24,668/- along with an amount equivalent to 5% of the purchase money to the auction purchaser. Failing which the petition in E.A.No.13 of 2015 would be automatically dismissed without any further reference to this Court. With these conditions, this Civil Revision Petition is allowed and the sale will be set aside only after making all the payment as afore stated. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

District Munsif Court, Nilakkottai.

+1CC to Mr.D.Senthil, Advocate, SR.No. 3454.

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21.01.2016