

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4238 of 2014

Rajendiran

.. Petitioner

Vs.

1.Ramasamy Reddiar (Deceased)

2.G.Babu

3.Pavunammal

4.Susila

5.Ethirajan

6.Malarvizhi

.. Respondents

(R2 impleaded vide Court order dated 13.07.2017 made in C.M.P.No.6589/2017)

(RR3 to 6 impleaded as Legal heirs of the deceased sole respondent viz. Ramasamy Reddiar vide order of Court dated 07.11.2017 made in M.P.No.1/2015)

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.09.2013 made in E.A.No.186 of 2012 in E.P.No.215 of 2009 in O.S.No.885 of 2004 on the file of the District Munsif, Tiruvannamalai.

For Petitioner : Mr.S.T.Raja
for M/s.O.Sai Ram Asso.

For R1 : Died

For R2 : Mr.K.Doraisamy, Senior Counsel
for Mr.Muthumani Doraisamy

For R3 to R6 : Mr.J.Ramakrishnan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 24.09.2013 in E.A.No.186 of 2012 in E.P.No.215 of 2009 in O.S.No.885 of 2004 on the file of the District Munsif, Tiruvannamalai.

2.The petitioner/defendant is the judgment debtor and first respondent/plaintiff is the decree holder in O.S.No.885 of 2004. The petitioner filed the said suit for recovery of a sum of Rs.27,640/- being the principal and interest due on a promissory note dated 04.07.2003 executed by the petitioner in favour of the first respondent for Rs.25,000/-. By the judgment and decree dated 23.03.2005, the said suit was decreed as prayed for with subsequent interest at the rate of 6% p.a. from the date of the

decree till the date of realization. The first respondent filed E.P for attachment and sale of the property belonging to the petitioner to realise the amounts due as per the decree in O.S.No.885 of 2004. The petitioner started making payments. The earlier two Execution Petitions filed by the first respondent were dismissed as not pressed. In the present E.P, the sale was ordered. The first respondent got permission to bid in the auction and he was the successful bidder and sale was confirmed in his favour. The first respondent filed R.E.A.No.100 of 2012 for delivery of possession. The said R.E.A was posted to 25.04.2012. The petitioner did not appear on that date and R.E.A.No.100 of 2012 was allowed on 25.04.2012. The petitioner filed R.E.A.No.186 of 2012 on 27.12.2004 under Order XXI Rule 11 (a) C.P.C to set aside the exparte order. According to the petitioner, while he was coming to Court to attend the Court proceedings in R.E.A.No.100 of 2012, the tyre of his two-wheeler got punctured and he could not appear before the Court in time and therefore, the non-appearance of the petitioner on 25.04.2012 is neither wilful nor wanton and prayed for setting aside the order dated 25.04.2012.

3.The first respondent filed counter affidavit and opposed the said application. According to the first respondent, the

petitioner has not filed any appeal against the earlier order and only to drag on the proceedings, the present application is filed. The reason given by the petitioner is not valid to set aside the order dated 25.04.2012 made in R.E.A.No.100 of 2012.

4.The learned Judge, considering the materials available on record, dismissed the application.

5.Against the said order dated 24.09.2013, made in E.A.No.186 of 2012 in E.P.No.215 of 2009 in O.S.No.885 of 2004, the present Civil Revision Petition is filed by the petitioner.

6.Pending Civil Revision Petition, the second respondent filed C.M.P.No.6589 of 2017 for impleading him as second respondent in the Civil Revision Petition on the ground that he has purchased 97 cents in the suit property on 13.01.2006 even before the sale. This Court allowed the C.M.P by the order dated 13.07.2017 and he is impleaded as second respondent in the Civil Revision Petition. The first respondent died on 06.09.2014 and the respondents 3 to 6 were brought on record as legal heirs of the deceased first respondent vide order of this Court dated 07.11.2017, made in M.P.No.1 of 2015.

7. Heard the learned counsel appearing for the petitioner, learned Senior counsel for the second respondent and learned counsel for the respondents 3 to 6 and perused the materials available on record.

8. From the materials available on record, it is seen that R.E.A.No.100 of 2012 was posted for hearing on 25.04.2012. The petitioner did not appear and put forth his case. Due to his absence, the said R.E.A was allowed and delivery was ordered by the learned Judge. Immediately, within 2 days, on 27.04.2012, the petitioner filed the present R.E.A.No.186 of 2012 to set aside the exparte order dated 25.04.2012 made in R.E.A.No.100 of 2012. According to the petitioner, the reason for his non appearance is due to the fact that his tyre got punctured while coming to the Court and therefore, he could not appear before the Court on time. The learned Judge, rejected his contentions on the ground that the petitioner has not produced any documents to substantiate his claim and has not examined himself or any independent witness to prove his case. The reasoning of the learned Judge is not a valid one and learned Judge failed to see that petitioner filed R.E.A.No.186 of

2012 to set aside the exparte order within 2 days. Therefore, it cannot be said that the intention of the petitioner for his non-appearance is malafide. The learned Judge committed an irregularity in dismissing the application.

9. For the above reason, this Civil Revision Petition is allowed. No costs. The second respondent is claiming to be the purchaser of 97 cents in the suit property. Hence, it is open to him to take appropriate proceedings before the Execution Court and put forth his case as per law.

15.11.2017

Index: Yes/No

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To

The District Munsif,
Tiruvannamalai.

V.M.VELUMANI,J.

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