

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4526 of 2011
& M.P.No.1 of 2011
& M.P.No.1 of 2012

1. M.Marimuthu Nadar
2. M.Lakshmi

.. Petitioners

R.Murugan

Vs.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.11.2011 made in unnumbered E.A.S.R.No.11426 of 2011 on the file of the Subordinate Judge, Poonamallee.

For Petitioner
For Respondent

: Mr.R.Bharath Kumar
: Mr.Niranjan Rajagobalan
for M/s.G.R.Associates

ORDER

The Civil Revision Petition has been filed against the fair and decreetal order dated 11.11.2011 made in unnumbered E.A.S.R.No.11426 of 2011 on the file of the Subordinate Judge, Poonamallee.

2. The petitioners are the defendants in O.S.No.22 of 2001 and respondents in E.P.No.49 of 2008. One M/s.Kalaimagal Mutual fund filed the suit in O.S.No.22 of 2001 against the petitioners and obtained decree on 19.09.2001. In E.P.No.99 of 2005 filed by the decree holder, the property was sold on 29.10.2007 in favour of the auction purchaser, the respondent herein. The sale was confirmed on 19.12.2007 and the sale certificate was issued on 24.03.2008. The respondent filed application for delivery of property purchased by him under Order 21 Rule 95 of CPC. The said application was numbered as E.P.49/2008. The petitioners filed E.A.SR.No.11426 of 2011 to reject the sale certificate issued in favour of the respondent, on the ground that the decree cannot be executed as contemplated under Section 47 CPC and to declare that sale certificate cannot be executed as decree in E.P.No.49 of 2008 and to dismiss the said

Execution Petition with costs of the respondent.

3. According to the petitioners, the respondent ought to have filed an application under Order 21 Rule 95 CPC and he cannot file separate Execution Petition, which can be filed only by a decree holder. The Execution Petition can be filed only to execute the decree and to take delivery of property and the respondent can file only an application in E.P.No.99 of 2005 to take delivery. The learned Judge considering the contention of the learned counsel of the petitioners and relying on Order 21 Rule 10 to 13, 95 to 97, 99 to 101 CPC and Rule 139 of Civil Rules of practice held that the auction purchaser cannot be expected to file an execution application when already the sale certificate is issued. All the applications under Order 21 Rule 11 (1) CPC must be in Form No.53 Tabular Column. The learned Judge also upon verification with the Registry held that the Registry can only number the application filed under Order 21 Rule 95 CPC as Execution Petition instead of Execution Application. Moreover, the earlier E.A.172 of 2009 to set aside the sale was dismissed on 07.10.2009 and CRP.No.3524 of 2009 was dismissed as not maintainable on 15.12.2009 and C.M.A.No.1 of 2010 was dismissed on 14.06.2011. The learned Judge, considering all these facts, as well as the fact that the petitioners have not

challenged the decree and sale certificate, and considering the power of Court under Section 47 CPC, rejected the E.A.Sr.No.11426 of 2011, against which the present CRP is filed.

4. The learned counsel for the petitioner submitted that a party can challenge the Execution proceedings in an application under Section 47 CPC, but the Court has to determine all the questions arose relating to the execution of the decree. The parties are entitled to let in oral and documentary evidence to prove their respective claims. The petitioners are denied opportunity to let in their evidence. The learned Judge, having held that the respondent is not entitled to file application in E.A. in E.P.No.49 of 2008, erred in holding that the point raised by the petitioners is only hyper technical. While so, the learned Judge ought to have given opportunity to the petitioners to deposit the decree amount with incidental expenses and bondage charges in the interest of justice. The learned Judge failed to see that the respondent played fraud in collusion with the decree holder to minimise the value of the property with lesser price.

5. The learned counsel for the respondent submitted that the respondent is an auction purchaser and the sale has been confirmed in his

favour. The respondent has filed application as per Order 21 Rule 95 CPC for delivery of the property and as per the procedures, the respondent filed application in Tabular form. As the same is as per the procedure, the respondent cannot be penalised by the Court as he followed all procedures in numbering the application and the Execution Petition.

6. Heard the learned counsel appearing for both sides and perused the materials available on record.

7. The respondents have filed CRP challenging the impugned order of the learned judge, who rejected the E.A.SR.No.11426 of 2011, which was filed to declare that the sale certificate cannot be executed as a decree and to dismiss E.P.No.49 of 2008. According to the petitioners, after confirmation of the sale and after issuance of the sale certificate, the auction purchaser can file only an application in E.P.No.99 of 2005 filed by the decree holder under Order 21 Rule 95 CPC for delivery of property and cannot file separate Execution Petition.

8. The contention of the petitioner is without merits and as per Order 21 Rule 11 CPC, the Execution Petition may be oral or in writing. When it is

in writing the said application must contain particulars mentioned in Rule 11 (2) of Order 21 CPC. As per Rule 139 of Civil Rules of Practice, Execution Petition must be in form No.53 in Tabular Column. None of the Rules in Order 21 CPC speaks about the application being filed by an affidavit with petition and when there is no specific form to file application, the form contemplated by the Civil Rules of Practice and the application under Order 21 CPC must be in Tabular form. The learned counsel for the petitioners has not pointed out any violation of the above procedure. Rule 95 of Order 21 CPC relates to delivery of properties in occupation of the judgment debtor. Rule 95 states that the court shall, on the application of purchaser, order delivery and put the purchaser in possession. Further, the learned Judge after verification with the Registry had held that numbering of the application filed under Order 21 Rule 95 CPC as Execution Petition is proper. On a reading of E.P.49 of 2008, it is seen that the said petition has been filed under Order 21 Rule 95 CPC. The earlier petition filed by the petitioner challenging the auction sale was dismissed and appeal by them was also dismissed. In the present application, the petitioners are not challenging auction sale, but after issuance of the sale certificate the right of respondent to take delivery of the property purchased by him. So the only objection is that the application under Order 21 Rule 95 CPC must be

by way of affidavit and petition. This procedure is not contemplated under Order 21 CPC. Even in the Execution Petition as mentioned in Order 21 Rule 11 (2) CPC every application shall be in writing to execute the decree. The said application is filed in Tabular form as per the Order 21 Rule 11 (2) and Rule 139 of Civil Rules of Practice. In view of the above facts, application filed by the respondent under Order 21 Rule 95 in Tabular form, being numbered as E.P. 49 of 2008, is maintainable.

9. The learned judge has elaborately dealt with all these provisions and considering the materials available on record, rejected the application filed by the petitioners by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court in the order of the learned trial judge, dated 11.11.2011.

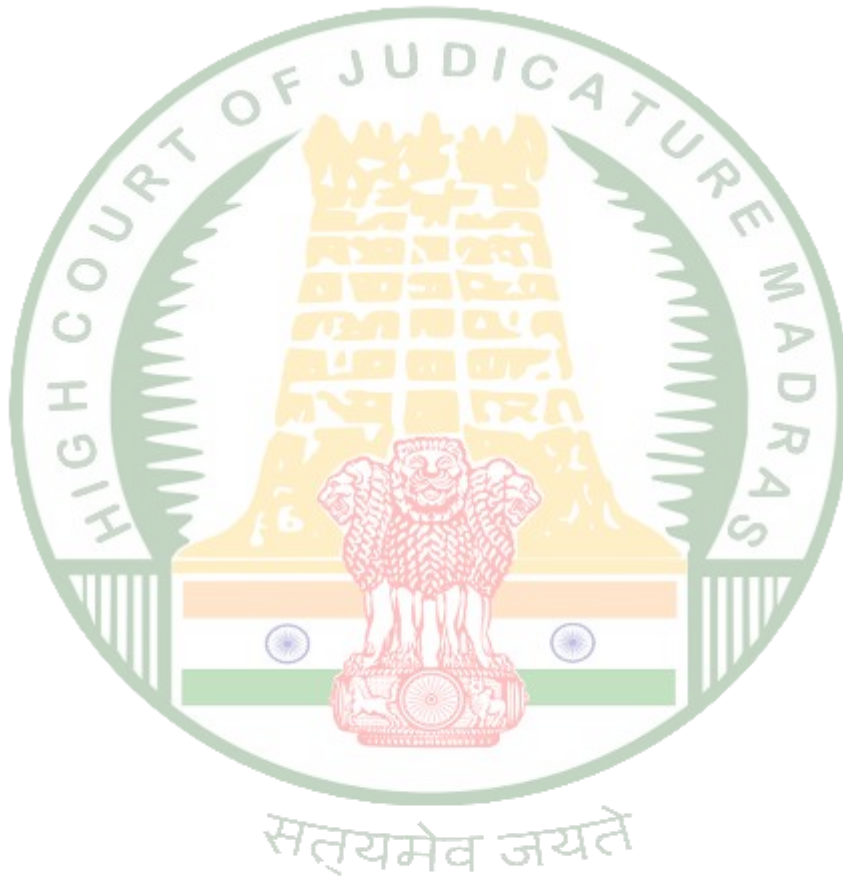
10. In the result the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Speaking Order/Non-speaking Order

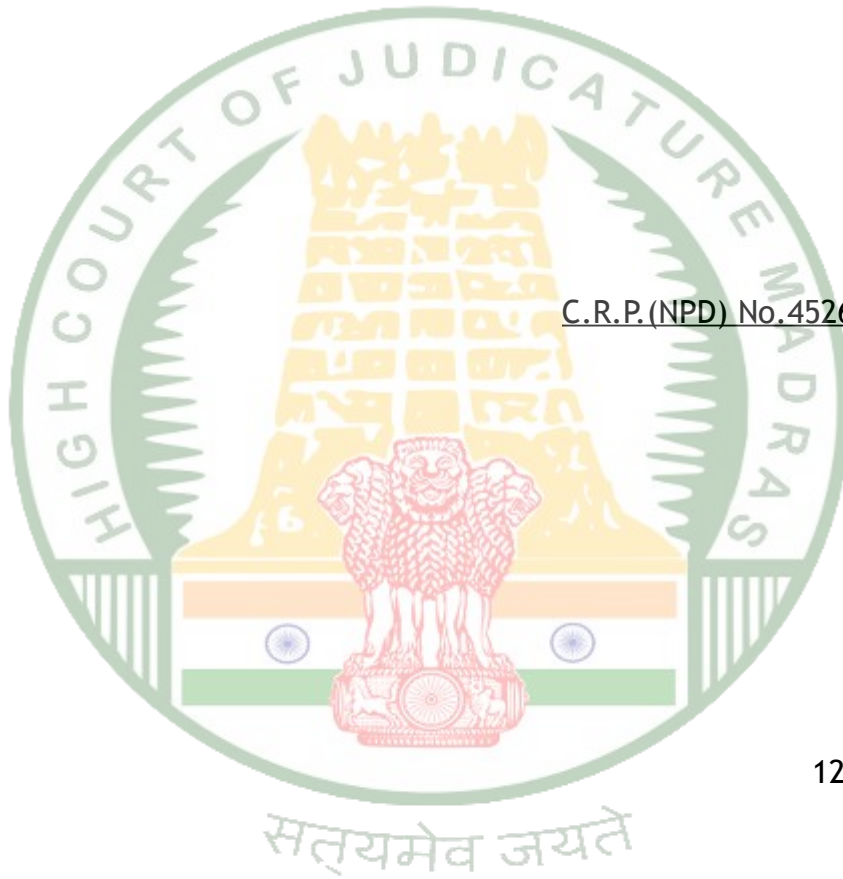
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V.M.VELUMANI, J.

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