

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3372 of 2015
& M.P.No.1 of 2015

A.Kandappan

.. Petitioner

Vs.

1.R.Nagalakshmi
2.R.Sekar
3.S.Shanthi
4.P.R.Jothipriya

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 22.07.2015 made in R.E.P.No.249 of 2010 in O.S.No.325 of 1998 on the file of the I Additional Subordinate Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Ms.Sandhya for
M/S.Sarvabhauman Associates

ORDER

Civil Revision Petition is filed against the order dated 22.07.2015 made in R.E.P.No.249 of 2010 in O.S.No.325 of 1998 on the file of the I Additional Subordinate Court, Salem.

2. One C.S.Ramamoorthy is the plaintiff and petitioner is the defendant in O.S.No.325 of 1998 on the file of the I Additional Subordinate Court, Salem. The said C.S.Ramamoorthy filed said suit for recovery of possession. Pending suit, plaintiff/C.S.Ramamoorthy died and the suit was decreed on 29.12.2009. The respondents, who are the legal heirs of the sole plaintiff viz., C.S.Ramamoorthy, filed R.E.P.No.249 of 2010 in O.S.No.325 of 1998 for attachment. The petitioner filed R.E.A.No.337 of 2013 in the said R.E.P. for dismissal of R.E.P. on the ground that when R.E.P. was filed, first appeal in A.S.No.49 of 2010 filed by the petitioner was pending on the file of the III Additional District Court, Salem. Pending R.E.P., first appeal in A.S.No.49 of 2010 filed by the petitioner was dismissed on 27.11.2010. The learned I Additional Subordinate Judge, Salem/Executing Court, in view of the dismissal of first appeal, dismissed R.E.A.No.337 of 2013 in R.E.P.No.249 of 2010

filed by the petitioner. The Executing Court by order dated 22.07.2015 ordered proclamation and sale on 02.09.2015.

3. Challenging the said order of dismissal dated 22.07.2015 made in R.E.P.No.249 of 2010 in O.S.No.325 of 1998, the petitioner has come out with the present Civil Revision Petition.

4. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

5. The contention of the learned counsel for the petitioner is that E.P. amount is only a sum of Rs.14,02,316/-. The learned Judge ordered proclamation and sale of both the properties for the realisation of Rs.14,02,316/- after fixing the upset price at Rs.One Crore for first item and Rs.90 Lakhs for second item of the property. The learned Judge has ordered sale of the properties worth about Rs.4.5 Crores to satisfy the meagre sum of the decretal amount. According to the petitioner, the learned Judge failed to follow the provisions under Order XXI Rule 64 C.P.C. This contention has considerable force.

Order XXI Rule 64 of C.P.C. reads as follows:

Order XXI Rule 64 C.P.C.

"64. Power to order property attached to be sold and proceeds to be paid to person entitled._ Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

6. As per the above provision, the Executing Court may order attachment and sale of any property or such portion of the property sufficient to satisfy the decree. In the present case, the learned Judge having fixed upset price of the two properties at Rs.One Crore and Rs.90 Lakhs respectively, erred in ordering sale of both the properties for realisation of Rs.14,02,316/-. In view of such irregularity, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The learned Judge is directed to consider the value of item Nos.1 and 2 separately and order sale of

portion of any one of the properties and if a portion of one of the property cannot be sold separately, order sale of any one of the property to satisfy the decretal amount.

7. When the Civil Revision Petition is taken up for hearing, the learned counsel for the petitioner submitted that pending Civil Revision Petition, he has paid a sum of Rs.8,00,000/- and the balance amount, the petitioner is willing to pay within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is permitted to pay the balance amount within eight weeks from the date of receipt of a copy of this order. If the petitioner fails to pay the balance amount, the order of the learned Judge dated 22.07.2015 made in R.E.P.No.249 of 2010 in O.S.No.325 of 1998 will be confirmed. The learned counsel for the respondents submitted that the sum of Rs.8,00,000/- deposited by the petitioner may be permitted to be withdrawn by the respondents. The respondents are permitted to withdraw the said amount after getting permission from the Executing Court by filing proper application.

8. With the above direction, the Civil Revision Petition is allowed. R.E.P.No.249 of 2010 is remitted back to the learned I Additional Subordinate Judge, Salem, to proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2017

Index : Yes/No

kj

To

I Additional Subordinate Judge, Salem.



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V.M.VELUMANI, J.

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