

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.5163 of 2011
& M.P.No.1 of 2011

K.R.Govindasamy .. Petitioner

Vs.

V.Dhayalan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Return endorsement dated 05.04.2011 made in Unnumbered E.A.No. Nil of 2011 in E.P.No.16 of 2007 in O.S.No.144 of 2008 on the file of the Subordinate Court, Vellore, Vellore District and direct the Court to number the same.

For Petitioner : Mr.P.Jagadeesan
For Respondent : Mr.A.Anbarasu

ORDER

This Civil Revision Petition has been filed against against the Return endorsement dated 05.04.2011 made in Unnumbered E.A.No. Nil of 2011 in E.P.No.16 of 2007 in O.S.No.144 of 2008 on the file of the Subordinate Court, Vellore, Vellore District and direct the Court to number the same.

2. The petitioner/judgment debtor is defendant and respondent is plaintiff in O.S.No.144 of 2008. The respondents filed the suit for recovery of money. The said suit was decreed on 30.10.2008. The respondent filed E.P.No.16 of 2007 to execute the decree for sale of the immovable properties of the petitioner. The auction of the property was conducted on 24.01.2011 and the decree holder, after obtaining permission from the Court to participate in the auction, purchased the property. The petitioner filed two applications, one for stay of all the proceedings in E.P. till the disposal of the E.A.No. Nil of 2011 filed by him to set aside the sale and another application under Order XXI Rule 90 C.P.C to set aside the sale, alleging irregularity in conducting the auction sale. The application filed under Order XXI Rule 90 C.P.C was not numbered due to the defects pointed out by the Court. Mean while, the sale in favour of the decree holder/respondent was confirmed on 28.03.2011.

3. The learned Judge returned the E.A. application filed by the petitioner to set aside the sale, raising a question of maintainability stating that the sale was confirmed on 28.03.2011 and E.P. was terminated.

4. Against that Return endorsement dated 05.04.2011 made in Unnumbered E.A.No. Nil of 2011 in E.P.No.16 of 2007, the present civil revision petition has been filed by the petitioner.

5. Heard both the learned counsels for the petitioner and the respondent and perused the materials on record.

6. The contention of the learned counsel appearing for the petitioner is that the petitioner filed application long before confirmation of sale. Therefore, the learned Judge ought to have numbered the application and heard the application on merits. This contention has no force. The petitioner has filed the application under Order XXI Rule 90 C.P.C on 14.02.2011, to set aside the sale, on the ground of irregularity and fraud. The said application was returned by the Court on 07.03.2011, pointing out certain defects. The petitioner has re-presented the application only on 28.03.2011. On the date of confirmation of sale the application was not on file. He was not vigilant enough to get the same numbered and bring the same before the Court for orders.

7. As per Order XXI Rule 92 C.P.C, the auction sale will become absolute when no application is made under Rule 89 or 90 or 91 or if made and was dismissed by the Court after hearing the application. In the present case, when the learned Judge confirmed the sale as per Order XXI Rule 92 C.P.C, no application to set aside the sale was pending before the Court. The application filed by the petitioner was returned on 07.03.2011. The petitioner did not re-present the said application till the date of confirmation of sale. Having failed to re-present the application filed and get the application numbered before confirmation of sale, it is not open to the petitioner now to contend that the learned Judge committed an irregularity in returning the petition filed by him, raising the maintainability.

8. The learned Judge has rightly held that the sale has been confirmed and E.P had been terminated and raised the question of maintainability. For the above reasons, this C.R.P is not maintainable and is liable to be dismissed as devoid of merits.

9. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2017

Index : Yes/No

gsa



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V.M.VELUMANI, J.

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To

The Subordinate Court, Vellore



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