

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2623 of 2013

and

M.P.No.1 of 2013

C.Annammal

... Petitioner

Vs

1.A.Balasubramanian

2.Ambalam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment in E.A.SR.No.58151 of 2011 in E.P.No.714 of 2008 in O.S.No.41 of 1982, dated 09.12.2011, on the file of the learned Xth Assistant Judge, City Civil Court, Chennai.

Petitioner : Mr.N.A.Kareem

Respondents: Mrs.R.Poornima (for R1)

Mr.P.Sivamani (for R2)

O R D E R

The petitioner, who is the 3rd party in E.P.No.714 of 2008, on the file of the Xth Assistant Judge, City Civil Court, Chennai, filed E.A.SR.No.58151 of 2011, seeking to set aside the auction sale of the schedule property, situated in Plot No.950 in Door No.27/39, Sahaya Madha Street, Butt Medu, G.K.M.Colony, Chennai-600 082, dated 14.08.2008 in E.P.No.714 of 2008 in O.S.No.41 of 1982, on the file of the Xth Assistant Judge, City Civil Court, Chennai.

2.The case of the petitioner/third party is that she has filed the suit in O.S.No.7602 of 1987, on the file of the learned VII Assistant Judge, City Civil Court, Chennai, praying for delivery of possession, permanent injunction and mandatory injunction and the same was decreed in favour of this petitioner/3rd party on 22.06.1999. The petitioner/third party also come forward by saying that subsequently she has filed E.P.No.639 of 2005 against the decree and the E.P. schedule property is situated in Plot No.950 in Door No.27/39, Sahaya

Madha Street, Butt Medu, G.K.M.Colony, Chennai-600 082. The said land was originally belonged to Tamil Nadu Slum Clearance Board, thereafter, the same was allotted in favour of the petitioner's husband Late.K.Chinnappan, who had paid the entire sale consideration towards lease-cum-sale deed to the Tamil Nadu Slum Clearance Board and obtained the possession of the same by virtue of its order dated 10.03.1983 in Na.Ka.No.142/82/A/E.A/Vuvathi/North.

3.After the decree, this petitioner/third party also states that she has filed Execution Petition in E.P.No.639 of 2005, on the file of the IX Assistant Judge, City Civil Court, Chennai. During the pendency of the said Execution Petition, the respondent/Judgment debtor has filed an application under Section 47 raising unbelievable claims in his favour with the sole intention of stalling the execution proceedings by hook or crook taken by them in E.P.No.639 of 2005 and the same was also dismissed by the learned IX Assistant City Civil Court, Chennai. Challenging the said order in E.A.No.4883 of 2009, the respondent/Judgment debtor has filed a civil revision petition in CRP.No.1518 of 2008 before this Court and the same was dismissed on 12.04.2011.

4.The petitioner also come forward by saying that after filing the

said petition in E.P.No.639 of 2005, the IX Assistant Judge, City Civil Court, Chennai, had ordered the delivery of possession directing the Judgment Debtor to deliver the possession on or before 20.12.2011 pursuant to the order of the learned IX Assistant Judge, City Civil Court, Chennai, this petitioner/3rd party taking steps to execute the warrant, but the present decree holder viz., A.Balasubramanian has initiated the vexatious E.P.No.714 of 2008 in respect of the very same property by twisting the facts and misguiding the Court, since this petitioner is in possession not to be enjoyed the fruitful benefit of the decree dated 22.06.1999 and the present petition in E.P.No.714 of 2008 shall not be permitted to take the bailiff for the purpose of taking delivery of possession of the property situates in Plot No.950 in Door No.27/39, Sahaya Madha Street, Butt Medu, G.K.M.Colony, Chennai-82.

5.However, after bringing the facts to the knowledge of the said Court by filing a stay of E.P. proceedings on 25.01.2011, the respondent in spite of oral observation made by the said Court, rushed and took delivery through Court bailiff on 28.11.2011. Therefore, this petitioner filed an application in E.A.SR.No.58151 of 2011 for setting aside the auction sale dated 14.08.2008 in E.P.No.714 of 2008.

6.The learned IX Assistant Judge, City Civil Court, Chennai has taken up the case for hearing without numbering the said petition in E.A.SR.No.58151 of 2011, passed an order by rejecting the said application on the ground that the execution proceedings in E.P.No.714 of 2008 was filed by the present decree holder/1st respondent herein. Pursuant to the decree passed in O.S.No.41 of 1982, dated 09.12.2011, since the case of the decree holder in E.P.No.714 of 2008 is that originally the suit was filed by one deceased S.R.Jain and others in O.S.No.41 of 1982 against one deceased R.Sambandam and others and later on the said suit was decreed in favour of the said deceased S.R.Jain and others. Based on the decree, the plaintiff in O.S.No.41 of 1982 namely, the deceased Jain and others were filed E.P.No.3392 of 1994 before the learned Xth Assistant Judge, City Civil Court, Chennai, for executing the decree and thereafter the property was brought for auction sale and this auction purchaser Mr.A.Balasubramanian has purchased the property on auction sale. Thereafter, after purchasing the property, this decree holder namely Mr.A.Balasubramanian has filed a separate Execution Petition in E.P.No.714 of 2008 for handing over the possession and sale certificate to be issued to him.

7.After filing the petition, filed in E.P.No.714 of 2008, the learned Xth Assistant Judge, City Civil Court, Chennai, executing the sale certificate by order dated 28.11.2011 itself in favour of the auction purchaser in E.P.No.714 of 2008, but the present petitioner/3rd party namely C.Annammal has filed the petition in E.A.SR.No.58151 of 2011 for set aside the alleged auction sale dated 14.08.2008 in E.P.No.714 of 2008 which is totally false, since there was no auction sale on the said date, but the case in E.P.No.714 of 2008 was posted only for hearing. Therefore, there is no question of setting aside the auction sale dated 14.08.2008 alleged by the petitioner/3rd party and hence the petition is not maintainable.

8.Apart from this, as per Section 47 of CPC, a person, who is a party in the proceedings alone can filed the application, but this petitioner/3rd party has not a party in E.P.No.714 of 2008 and also in O.S.No.41 of 1982 and therefore, he cannot questioned the said auction sale in the present application in EA.SR.58151 of 2011. Therefore, the learned Judge has rejected the application filed by this petitioner/obstrucuter/3rd party in EA.SR.No.58151 of 2011 on 09.12.2011. Challenging the same, the present civil revision petition has been filed before this Court.

9.I heard Mr.N.A.Kareem, learned counsel appearing for the petitioner and M/s.R.Poornima, learned counsel appearing for the 1st respondent and Mr.P.Sivamani, learned counsel appearing for the 2nd respondent.

10.Admittedly, the suit in O.S.No.41 of 1982 has been filed by the said deceased S.R.Jain and others against one deceased R.Sambandam and others, the said suit was filed for recovery of amount. Though the decree was passed in favour of the plaintiff/deceased S.R.Jain and others, but the defendants deceased R.Sambandam and others were not paid the decree amount. Therefore, execution petition was filed and the property in Plot No.950 in Door No.27/39, Punitha Sagayamada Street, Butt Medu, GKM Colony, Chennai-23 was brought for auction sale by the executing court namely, the Xth Assistant Judge, City Civil Court, Chennai in E.P.No.3392 of 1994. Accordingly, this auction purchaser namely Mr.A.Balasubramanian, has bid the property and purchase the same through auction sale. Later on the auction purchaser Mr.A.Balasubramanian has filed the execution petition in E.P.No.714 of 2008 and pursuant to the same, the learned Xth Assistant Judge, City

Civil Court was pleased to issued the sale certificate on 28.07.2011 in favour of the auction purchaser Mr.A.Balasubramanian and the possession was also already handover to him on 28.11.2011.

11.Therefore, it is made clear that this petition filed by the petitioner/obstructer/3rd party in E.A.SR.No.58151 of 2011 is not at all maintainable, since the petitioner has filed an application only under Order 21 Rule 90 of CPC to set aside the auction sale of property at GKM Colony, Chennai-82, dated 14.08.2008 in E.P.No.714 of 2008.

12.Admittedly, the auction sale was taken place long back and the learned X Assistant Judge, also issued the sale certificate in the year 2007 itself and the possession was also handed over to him on 28.11.2011, therefore, there is no question of setting aside the auction sale alleged to be held on 14.08.2008.

13.Apart from this, as per Section 47, this petitioner/3rd party is not a party to the proceedings to the E.P.No.714 of 2008 and O.S.No.41 of 1982, hence, he cannot question the auction sale. The petition filed by the petitioner/obstructer/3rd party under Order 21 Rule 90 of CPC, which says that if any fraud has been committed in the

auction sale that can be challenged by the parties concerned. But, in this case, there was no fraud committed as alleged by the petitioner/third party, since the executing Court namely the X Assistant Judge was properly considered and rejected the application filed by the petitioner/obstructor/3rd party on the ground that pursuant to the decree in O.S.No.41 of 1982, the decree holder filed the E.P.No.3392 of 1994, and pursuant to that the Execution Court has brought the property for auction sale and this petitioner Mr.A.Balasubramanian in E.P.No.714 of 2008 has purchased the property in auction sale which is absolutely proper.

14.It is also made clear that this petitioner/obstructor/third party is not at all a party in the suit in O.S.No.41 of 1982 filed by the deceased S.R.Jain and others and in E.P.No.3392 of 1994. Therefore, this petitioner/third party have no right to file this petition in E.A.SR.No.58151 of 2011 for setting aside the auction sale alleged to be held on 14.08.2008 in E.P.No.714 of 2008. In fact, the auction sale was completed long back, the sale certificate was also issued to this petitioner in E.P.No.714 of 2008 Mr.A.Balasubramanian on 28.11.2011 itself. Therefore, now this petitioner/third party who is no way connected to the suit as well as in the E.P.No.714 of 2008, have no

right to file the petition for setting aside the auction sale dated 14.08.2008, which was not at all conducted on that day and the order of the learned Xth Assistant Judge, City Civil Court, Chennai, rejecting the petition in E.A.SR.No.58151 of 2008 is well considered order and hence this Court does not find any irregularity or illegality in the said order warranting interference by this Court.

15.In the result:

(a) the civil revision petition is dismissed by confirming the order passed in E.A.SR.No.58151 of 2011 in E.P.No.714 of 2008 in O.S.No.41 of 1982, dated 09.12.2011, on the file of the learned Xth Assistant Judge, City Civil Court, Chennai;

(b) the learned Xth Assistant Judge, City Civil Court, Chennai is directed to dispose of the E.P.No.714 of 2008, within a period of 15 days from the date of receipt of a copy of this order, on day to day basis, without giving any adjournment to either parties.

16.Therefore, the civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

27.02.2017

Note: Issue order copy on 03.03.2017.

vs

Index: Yes

Internet: Yes

To

The Xth Assistant Judge, City Civil Court,
Chennai.

M.V.MURALIDARAN,J.

VS

Pre-Delivery order made in
CRP(NPD)No.2623 of 2013
and
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<http://www.judis.nic.in>