

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2017

CORAM

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

**CRP(NPD)No.618 of 2013 and
M.P.No.1 of 2013 and
Caveat No.5334 of 2012**

Dhanalakshmi

... Petitioner

Vs

1.Velusamy gounder

2.Duraisamy

3.Ranganayaki

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 17.10.2012 in E.A.No.122 of 2010 in E.P.No.21 of 1995, on the file of the Sub Court, Udumalpet.

Petitioner : Mr.N.Rajan

Respondents:Mr.S.Gunalan (for R1 and R3)
for M/s.D.Muthuselvam
No Appearance (for R2)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair order dated 17.10.2012 in E.A.No.122 of 2009 in E.P.No.21 of 1995 on the file of the Sub Court, Udumalpet.

2.The case of the revision petitioner is that she is the bonafide purchaser of petitioned mentioned property in the Execution Petition in E.P.No.21 of 1995 in M.C.O.P.No.1 of 1989 on the file of the Sub Judge, Udumalpet. In the year 2004, she purchased the petition mentioned property from her vendor namely Mr.Duraisamy, the 2nd respondent herein vide a registered sale deed dated 22.04.2004. However, subsequently the said property belonged to her vendor Mr.Duraisamy was found attached and Court auctioned in furtherance of Execution proceedings in E.P.No.21 of 1995, in favour of one Velusamy gounder, the 1st respondent/Auction purchaser. Originally the Award stood in favour of the 3rd respondent namely Ranganayaki, Decree holder and the Court auction was at her instance, so as to satisfy the Award passed against the 2nd respondent / Judgment

debtor in M.C.O.P.No.1 of 1989 on the file of the Sub Judge, Udumalpet.

3.It was further found by the revision petitioner that the 1st respondent Velusamy gounder filed E.A.No.183 of 2009 in the Execution Petition in E.P.No.21 of 1995 in M.C.O.P.No.1 of 1989 on the file of the Sub Judge, Udumalpet for recovery of possession of the property. Thereupon the revision petitioner stating her bonafide purchase and the fact of her possession and valid title over the petition mentioned property filed E.A.No.122 of 2010 in E.A.No.183 of 2009, under Order 21 Rule 97 to disallow the E.A.No.183 of 2009 for recovery of property filed by Velusamy gounder. However, the Learned Trial Judge without proper appreciation of the facts involved in the case, has erroneously dismissed the revision petitioner's application in E.A.No.122 of 2010 in E.A.No.183 of 2009. The said order is impugned herein.

4.I heard Mr.N.Rajan, learned counsel appearing for the revision petitioner and Mr.S.Gunalan, learned counsel appearing for the respondents 1 and 3, there was no representation for the 2nd respondent.

5.The learned counsel for the petitioner would submit that she is a bonafide purchaser of the petition mentioned property and the same was purchased by her from his vendor Duraisamy, the 2nd respondent for a valuable consideration vide a registered sale deed dated 22.04.1994. At the relevant point of time of revision petitioner's purchase there was neither any attachment nor even execution proceedings in respect of the petition mentioned property. Therefore the sale in favour of the revision petitioner made prior to the execution proceedings is valid and the same cannot be vitiated by the execution proceedings. Further the revision petitioner has filed a suit in O.S.No.436 of 2009 against the respondents herein for declaration and Permanent Injunction in respect of the above property and the same is pending. However, the learned trial Judge failed to appraise the above facts and erred in holding that the revision petitioner and the 2nd respondent are husband and wife and the filing of the above E.A.No.122 of 2010 in E.A.No.183 of 2009 is nothing but a tool to defeat the award in favour of the 3rd respondent.

6. Further the executing Court failed to adjudicate upon the rights of the revision petitioner, despite being duty bound to decide such rights of a third person at the event of resistance or objection under Order 21, Rule 97. In this context the Learned counsel for revision petitioner relied upon the decisions of the Hon'ble Apex Court in the matter of **Shreenath & Another v. Rajesh** reported in **CDJ 1998 SC 396** and **Silverline Forum Pvt. Ltd. v. Rajiv Trust** reported in **CDJ 1998 SC 394**, wherein it was held that the Executing Court under Order 21, Rule 97 can adjudicate upon the rights of a third person or resistor at the event of resistance or objection.

7. Per Contra, the Learned Counsel for the 3rd respondent would submit that the revision petitioner is not a bonafide transferee and in fact she being the wife of the 2nd respondent Duraisamy, the Judgment Debtor, was well aware of the Award passed as against her husband in M.C.O.P.No.1 of 1989. Though, the Award is of the year 1991, till now the revision petitioner has successfully dragged the case and thereby prevented the 1st respondent from taking possession of the property, further she disabled the 3rd respondent from enjoying the fruits of the Award.

8.The Executing Court rightly having found that the revision petitioner is not a bonafide purchaser and the sale itself was with fraudulent intention to defeat the Award, has rightly held that the revision petitioner has no right over the petition mentioned property.

9.On perusal of the entire records and the impugned order, it is seen that the husband of the 3rd respondent met with a road accident on 16.01.1987 resulting in his death. Therefore, M.C.O.P.No.1 of 1989 on the file of the Motor Accidents Claim Tribunal/Sub Judge Dindigul came to be filed by the 3rd respondent claiming compensation. In the said claim petition the 2nd respondent was held liable for the 3rd respondent's husband's death and hence was directed to pay a sum of Rs.50,000/- as compensation. However, the 2nd respondent failed to compensate the 3rd respondent and thereupon the execution proceedings in E.P.No.21 of 1995 in M.C.O.P.No.1 of 1989 to realize the award was filed by the third respondent.

10.At this juncture, it is noticed by this Court that the revision petitioner herein earlier filed an application in E.A.No.73 of 2001 in E.P.No.21 of 1995 in M.C.O.P.No.1 of 1989 on the same set of

allegations and thereafter the said E.A.No.73 of 2001 came to be dismissed for non prosecution on 15.12.2003. Further it is found that the revision petitioner is none other than the wife of the Judgment Debtor Duraisamy and they lived under one roof. The same came to light vide Ex.D2 and Ex.D3 the Voter I.D. card and the copy of the main claim petition in M.C.O.P.No.1 of 1989 respectively. Furthermore it is seen that the sale deed executed by the 2nd respondent in favor of the revision petitioner is with malafide intention to escape his liability fixed in M.C.O.P.No.1 of 1989.

11. Therefore, it is obvious for this Court to find that the revision petitioner's motive is only to protract the proceedings endlessly and thereby defeat the 3rd respondent from realizing the fruit of the award. Admittedly the 3rd respondent being a widowed lady having lost her husband and filed MCOP petition in the year 1989, still after about 26 years from passing of award in the year 1991, has not seen the colour of the coin of Award.

12. In so far as the contention of the revision petitioner that the executing Court has failed to adjudicate upon the rights of the revision petitioner under Order 21, Rule 97 this Court is not inclined to accept

the same. No doubt that the Executing Court under Order 21, Rule 97 is empowered to decide upon the rights of any person obstructing and resisting the handover of possession of an immovable property. In the case on hand the records disclose that the Executing Court after due consideration of Ex.D2 and Ex.D3, besides the deposition of the revision petitioner and the 2nd respondent and on taking due account of dismissal of revision petitioner's earlier application for same relief, has after an elaborate discussion of facts involved in the case has rightly held that the revision petitioner have no right over the property and through a fraudulent transaction she cannot object or resist the execution of Award in M.C.O.P.No.1 of 1989.

13.For the foregoing reasons, this Court comes to conclusion that the case on hand is a clear case of abuse of process of law and vexatious. It is needless to say that the Learned Judge on proper appreciation of the above facts has rightly dismissed the revision's petitioner's application in E.A.No.122 of 2010 in E.A.No.183 of 2009 and the same does not warrant any interference.

14.In the result, this Civil Revision Petition is dismissed, by confirming the order passed in E.A.No.122 of 2010 in E.P.No.21 of

1995, dated 17.10.2012, on the file of the Sub-Court, Udumalpet. No cost. Consequently, connected miscellaneous petitions are closed.

20.02.2017

Note: Issue order copy on 10.08.2017

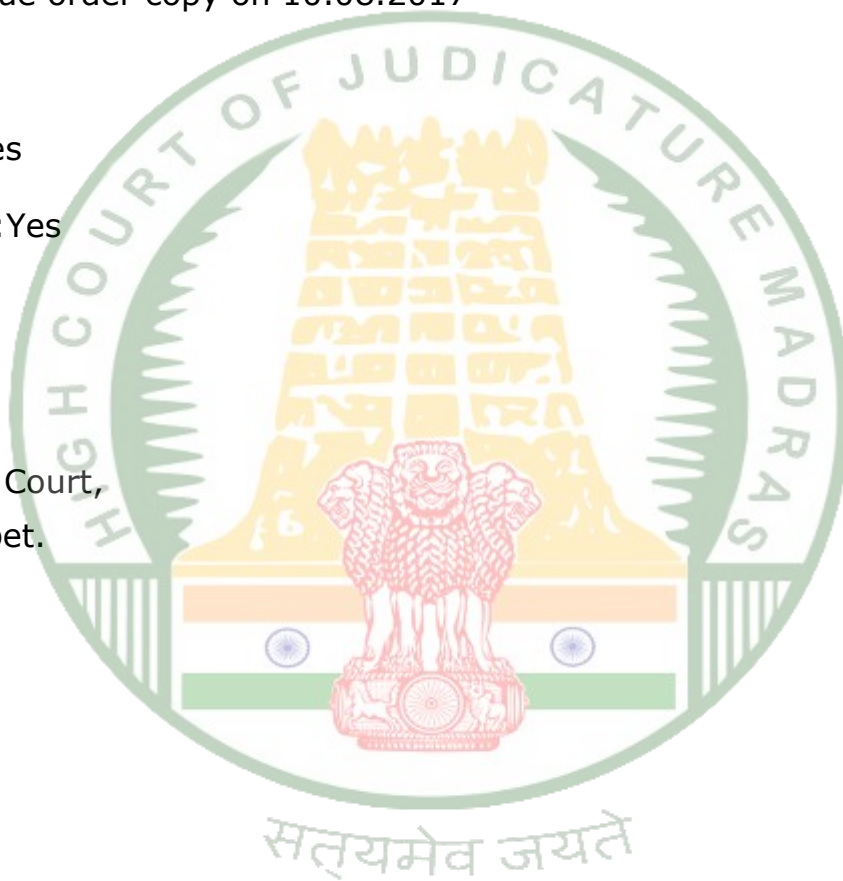
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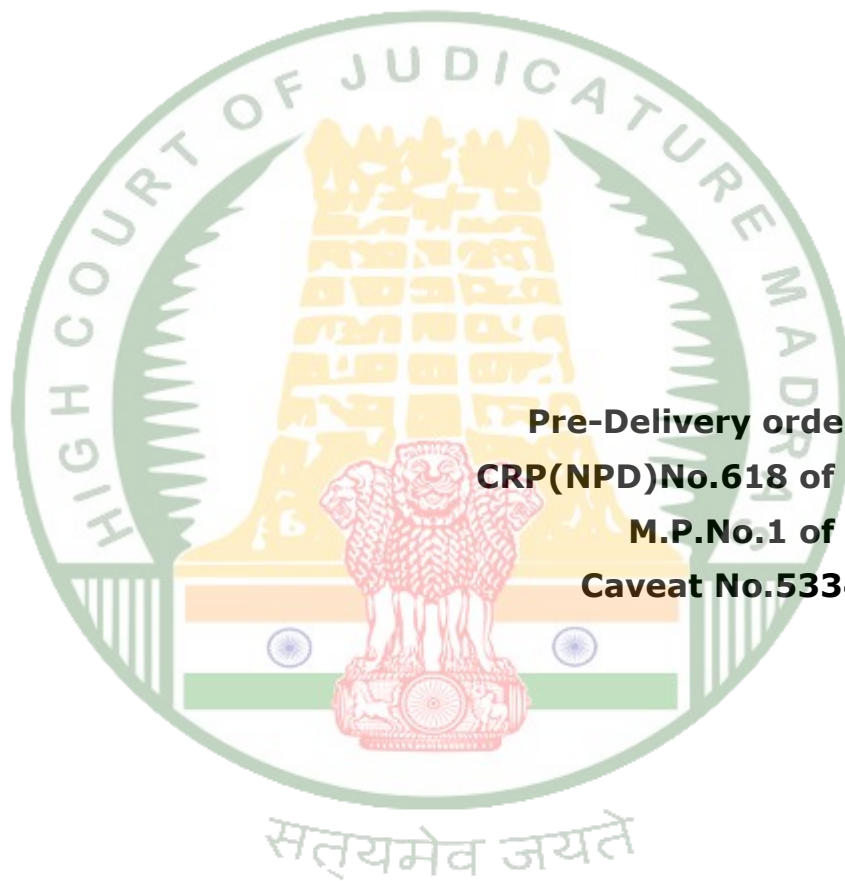
The Sub Court,
Udumalpet.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery order made in
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