



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:23.06.2017

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

WEB COPY

C.R.P. (MD) No.1178 of 2017
and
C.M.P. (MD) No.5519 of 2017

Thangasamy

...Petitioner

1.Sundari
2.Jeyamurugan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 21.04.2017 in I.A.No.17 of 2016 in unregistered A.S.No. of 2016 on the file of the Principal District Court, Thoothukudi.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.H.Arumugam

ORDER

This Civil Revision Petition is directed against the dismissal of application in I.A.No.17 of 2016 in unregistered A.S.No. of 2016 on the file of the Principal District Court, Thoothukudi, dated 21.04.2017 filed by the revision petitioner before the appellate Court to prefer the appeal against the judgment passed in O.S.No.138 of 2005, as a third party.

2.The trial Court after considering the history of the suit, has passed a detailed order, wherein the Court below has come to the conclusion, that the revision petitioner is alleged to have purchased the suit property pending execution proceedings from the judgment debtor and after expiry of all possibilities, filed a petition to set aside the exparte decree passed in the suit, as well as application to set aside the exparte order passed in the execution proceedings in a suit for permanent injunction and an application was filed to grant to leave to prefer appeal as a third party. Since the facts of the case does not carry any merit and also suffers from *mala fide* intention to protract the proceedings regarding the same, the trial Court has dismissed the application.

3.Aggrieved by that, the present revision petition is filed, on the ground that the revision petitioner is a *bona fide* purchaser by virtue of sale deed, dated 09.09.2010, for consideration of Rs.5,00,000/- (Rupees Five Lakhs only) from the



second respondent and entitle for leave to prefer the appeal as purchaser.

4. Further, it is also submitted by the learned Counsel appearing for the revision petitioner that after purchase of the demised premises, the revision petitioner and his family are residing in the premises and if an opportunity is not provided for them to contest the decree passed by the trial Court in the appeal, their valuable right will be deprived.

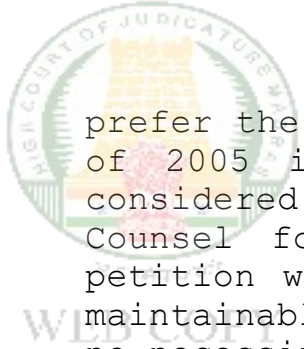
5. The learned Counsel appearing for the respondents submitted that this application is filed in collusion with the judgment debtor to delay the execution of decree and delivery of the possession. It is admitted by the revision petitioner that the judgment debtor lost to substantiate the above plea.

6. The learned Counsel has circulated the particulars regarding the dates and events connected with the matter, which indicated that the suit based on a sale agreement for specific performance was filed before the Subordinate Court, Thoothukudi and taken on file as O.S.No.138 of 2005 wherein, the respondents herein also filed I.A.No.620 of 2005 seeking interim injunction restraining the defendant from alienating the property and the same was allowed on 13.10.2005. The defendant, namely, Jeyamurugan failed to file a written statement and left the suit to go ex-parte.

7. The trial Court after examining the witnesses has passed the ex-parte decree on 05.12.2006. The defendant filed an application to set aside the ex-parte decree with delay of 131 days which was allowed on cost, but ultimately dismissed on 17.04.2008 for non payment of cost. Thereafter, the plaintiff/decreed holder filed E.P.No.106 of 2008 wherein, that Execution Petition against the defendant/Judgment debtor remained exparte and an order was passed on 19.01.2010. The alleged sale in favour of revision petitioner has been passed on 19.10.2010. When there was a decree to enforce and Execution petition was pending, the revision petitioner has filed a suit in O.S.No.514 of 2011 on the file of District Munsif, Thoothukudi, seeking permanent injunction based on his right in the sale deed dated 09.09.2010. The suit was later dismissed and no appeal was preferred by the revision petitioner against the dismissal of the suit.

8. Under these circumstances, the vendor of the revision petitioner again filed an application to set aside the ex-parte decree with delay of 1384 days and also filed an application to set aside the ex-parte decree passed in the Execution Petition. Both the applications were dismissed.

<https://hcservices.ecourts.gov.in/hcservices/> 9. The revision petitioner filed a claim petition in E.A.No.304 of 2011 in E.P.No.106 of 2008 which also dismissed on 30.07.2014. Under this Circumstances, the above application seeking leave to



prefer the appeal against the judgment decree passed in O.S.No.138 of 2005 is not maintainable and the trial Court has rightly considered the entire facts and dismissed it. Hence, the learned Counsel for the respondents submitted that it is a frivolous petition without any basis. Since the application itself is not maintainable and it is held to be so by the Court below there is no necessity to entertain this revision petition.

10.After considering the material facts available on record and hearing the respective Counsels, this Court is of the opinion that the revision petitioner was the purchaser of the property after the decree in the specific performance suit and when Execution Petition pending. Further, the petitioner has already filed a suit for permanent injunction as early as 12.10.2011 in O.S.No.514 of 2011 and the same has been dismissed on merits. While so, having knowledge about the decree and Execution Petition, the present application seeking leave to file an appeal challenging the decree passed on 05.02.2006 is rightly dismissed by the appellate Court for the reasons stated therein.

11.With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is rejected.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Principal District Court,
Thoothukudi.

+1cc to Mr.Mr.G.Prabhu Rajadurai ,Advocate,SR.62017
+1cc to Mr.Mr.H.Arumugam ,Advocate,SR.62015

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MM/SMI

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