

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :27.06.2017
(Reserved on 23.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**CRP (NPD) (MD) No.1187 of 2017****and****CMP (MD) No.5564 of 2017**

Sekar

... Petitioner/Petitioner/
3rd party/3rd party

vs.

1)Valliammal

... 1st Respondent/1st Respondent/
Decree Holder/Plaintiff

2)Saravanan

3)Annadurai

... Respondents 2 & 3/Respondents 2 & 3/
Judgment Debtor/Defendants

Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair and decreetal order made in E.A.No.53 of 2017 in E.P.No.156 of 2010 in O.S.No.513 of 1999 on the file of the I Additional Sub Court, Trichy, dated 24.02.2017 and quash the same and allow the Civil Revision Petition.

For Petitioner : Mr.V.Sasikumar

ORDER

The Revision Petitioner herein is pendente lite purchaser of 2nd item of the suit property which was under attachment pursuant to the order passed in the Attachment Before Judgment Petition I.A.No.437/1999 dated 06.08.1999. He has purchased the property on 05.06.2009 pending suit in O.S.No.513/1999 which was decreed few months later on 02.09.2009.

2.In E.P.No.156/2010, the decree holder has brought the property into court auction for the realisation of decree amount and the same has been sold in auction held on 30.09.2015. While the Execution petition posted for confirmation of sale, this revision petitioner has filed applications in E.A.No.52/2017, E.A.No.53/2017 and E.A.SR.No.1077/2017 to re-open the execution petition, to permit him to deposit the decree amount and to condone delay of 451 days and set aside the sale dated 30.09.2015



respectively. The Execution Court has disallowed his applications vide common order dated 24.02.2017.

3. The present revision petition is directed only against the dismissal of his application E.A.No.53/2017, seeking permission to deposit the decree amount on the ground that his application should not have been dismissed summarily since he is a bonafide purchaser and the attachment of 2nd item property made in I.A.No.437/1999 was dismissed for default on 18.11.1999. Immediately after knowledge of the sale, he has preferred E.A.No.424/2015 under Order 21 Rule 99 of CPC. The purchaser has not paid the full auction price on the date the revision petitioner filed his application to set aside the sale and therefore, the Court below ought not to have dismissed his applications.

4. Heard the learned counsel for the revision petitioner. The connected records and the order impugned perused. The court below has not dismissed the application summarily as pleaded by the revision petitioner. After notice to the respondent and on verification of the facts pleaded in the light of law governing the issue, the Court below has passed a well considered speaking order.

5. On perusal of the record, the allegation that the attachment before judgement in I.A.No.437/1999 was dismissed for default on 18.11.1999 is a truncated fact. The attachment order was passed on 06.08.1999. As against the 2nd defendant, it was dismissed on 18.11.1999. Later, it was restored on application by the plaintiff/petitioner. This fact is admitted by the revision petitioner in his own affidavit filed in support of the application I.A.No.53/2017. Contrary to his own admission and record, the above ground is canvassed before this court. It is also factually and legally wrong to say that the revision petitioner is a bonafide purchaser pendente lite.

6. It is an admitted fact that on the day of his purchase, he was aware of the encumbrance. He has withheld Rs.1,25,000/- to clear the encumbrance. The vendor has also agreed for that and the same has been reduced into writing on 05.06.2009. This agreement which forms part of the typeset filed along with the revision petition belies the case of the revision petitioner that he is a bonafide purchaser and he came to know about the decree and attachment only after sale. When he was aware of the encumbrance and pendency of suit on the date of his purchase namely, 05.06.1999 and having withheld part of the sale consideration to discharge the debt, he has kept quite till sale of the property. Further, as pointed out by the Court below, this application is filed not in time and in consonance with the provisions of Order 21 Rule 89 of CPC. Application to reopen the execution petition



or the application to set aside the court auction after 451 days does not carry any merit or bonafide.

7.The document relied by the revision petitioner itself reveals that on the day he purchased the property, he was aware of the pendency of the money suit and attachment of the property. Admittedly he has withheld part of the sale consideration in lieu of clearing the encumbrance by his vendor. As a purchaser pendente lite, he had every opportunity to get himself impleaded and discharge the suit amount with the money he had withheld. Now, he offers to pay the decree amount long after the property being sold in the court auction to a third party.

8.If not pending suit, at least he should have filed these applications immediately when he filed E.A.No.424/2015 and E.A.No.367/2015. Having failed to do so, just filing an application belatedly without any semblance of bonafide clearly exposes the malafide intention of the revision petitioner to protract the execution proceedings.

9.In the light of the above facts and circumstances, the order of the Trial Court is legally and factually sustainable and the revision petition deserves to be dismissed.

In the result, CRP.No.1187/2017 is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The I Additional Subordinate Judge,
Trichy.

Copy to:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S. V.SASIKUMAR, Advocate, SR.No.62112.

Pre-Delivery order made in
CRP(NPD) (MD) No.1187 of 2017
27.06.2017

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SDS/SKN:RSK/SAR 2/03.07.2017/3P/4C

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