



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) Nos. 163 and 164 2017 (PD)
and CMP(MD) Nos.676 and 677 of 2017 in
CRP(MD) Nos. 163 and 164 2017 (PD)

V. Velmurugan

Petitioner in CRP 163/2017

T.Venkatachalam

Petitioner in fCRP.164/2017

Vs.

1. P.Murugesan

2. P. Bhagat Singh

Respondents in both CRPs.

Prayer: These Civil Revision Petitions are filed under Section 115 of CPC to set aside the order and decreetal order dated 09.08.2016 passed in E.A.Nos.76 and 77 of 2011 in E.P.No.9 of 2010 in O.S.No.182 of 2007 on the file of the I Additional District Judge, Madurai.

For Petitioner

:Ms. S. Mahesh Babu

C O M M O N O R D E R

These Civil Revision Petitions are filed to set aside the order and decreetal order dated 09.08.2016 passed in E.A.Nos.76 and 77 of 2011 in E.P.No.9 of 2010 in O.S.No.182 of 2007 on the file of the I Additional District Judge, Madurai.

2. In both the Civil Revision Petitions issues are one and the same and therefore, both the Civil Revision petitions are disposed of by this Common Order.

3. The petitioners in both Civil Revision Petitions are third parties to the E.P.No.9 of 2010 in O.S.No.182 of 2007, on the file of the I Additional District Judge, Madurai. The petitioners filed E.A.Nos.76 and 77 of 2011 in E.P.No.9 of 2010 in O.S.No.182 of 2007 on the file of the I Additional District Judge, Madurai.

4. According to the petitioners, they purchased portion of the suit property by deed of sale dated 12.05.2011 from one Pushpam and Ilayaraj and the wife and son of the second respondent. The petitioner in CRP(MD).No.164 of 2017 in E.A.No.77 of 2011 purchased by the deed of sale through one Thilagam, Sundareswari, daughters of the second respondent. The wife, son and daughters of the second respondent became owners of the suit property, as per the compromise decree passed in O.S.No.266 of 2010. According to the petitioners they are bonafide purchasers of the property for



valuable consideration and therefore, prayed for dismissal of the Execution Petition filed by the first respondent against the second respondent.

5. The first respondent filed counter affidavit and opposed the said application and submitted that the petitioners filed petition under Order 21 Rule 97 of CPC. The petition filed by third parties are not maintainable. Only a decree holder or auction purchaser can maintain the petition. The petitioners are not the bonafide purchasers. They knew about the legal proceedings and petitioners and respondents 1 and 2 are residing in the same street and knowing fully well about legal proceedings about suit, first appeal and Execution Petition they purchased the property. The purchase by the petitioners are hit by principles of lis pendens. The first respondent filed suit in O.S.No.182 of 2007 and the said suit was decreed in the year 31.12.2009. Against that second respondent filed A.S.No.119 of 2010. The said first appeal was dismissed. After that first respondent filed E.P.No.9 of 2010 to execute the decree passed in his favour and prayed for dismissal of both the applications filed under Order 21 Rule 97 of CPC.

6. Before the learned Judge, both the petitioners were examined themselves as PW.1 and in both the petitions marked one document as Ex.P1. The first respondent examined himself as RW.1 and marked three documents as Exs.R1 to R3.

7. The learned Judge considering the Judgment of the Hon'ble Supreme Court reported in 2011(15) SCC 377 held that petition by filed the petitioners under Order 21 Rule 97 of CPC is maintainable. The learned Judge dismissed the applications on the ground that purchase by the petitioners hit by Principles of lis pendens.

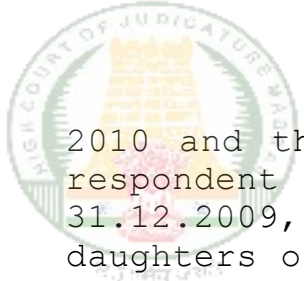
8. Against the said order of dismissal, present two Civil Revision Petitions have been filed.

9. The learned Counsel appearing for the petitioners submitted that the learned Judge failed to see that the petitioners are bonafide purchasers having purchased from lawful owner as per the compromise decree, passed in O.S.No.266 of 2010. The learned Judge without affording an opportunity to the petitioners dismissed the applications after holding that petitions under Order 21 Rule 97 of CPC is maintainable. The learned Judge did not properly appreciate the judgment of the Hon'ble Supreme Court reported in 2011(15) SCC 377.

10. I have heard the learned counsel appearing for the petitioners and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

11. From the materials available on record it is seen that first respondent filed suit in O.S.No.182 of 2007 for specific performance of the agreement of sale and the said suit was decreed on 31.12.2009. Against that second respondent filed A.S.No.119 of



2010 and the said appeal was dismissed on 24.09.2010. The first respondent filed E.P.No.9 of 2010 to execute the decree, dated 31.12.2009, passed in their favour. While so, the wife, son and daughters of the second respondent filed O.S.No.266 of 2010 against the second respondent colluded together and compromise decree was passed in O.S.No.266 of 2010. As per the terms of compromise decree, the wife, son and daughters of the second respondent were allotted shares in the suit properties. Based on the said compromise decree, the petitioners purchased from wife, son and daughters of the second respondent. The second respondent having suffered a decree for specific performance and failed in first appeal, has no right to allot the shares to his wife, son and daughters.

12. In view of the above fact, the reasoning of the learned Judge that the purchase by the petitioners are hit by principles of lis pendens is valid. The learned Judge properly considered the judgment of the Hon'ble Supreme Court reported in 2011(15) SCC 377 held that petitions filed under order 21 Rule 97 of CPC are maintainable. Before the learned Judge petitioners let in evidence and marked documents. In the circumstances it cannot be said that learned Judge did not give an opportunity to the petitioners. The learned Judge has considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the E.A.Nos.76 and 77 of 2011 in E.P.No.9 of 2010 in O.S.No.182 of 2007 and there is no irregularity or illegality warranting interference by this Court.

13. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.
Sd/-

Assistant Registrar()

/TRUE COPY/

Sub Assistant Registrar

To

The learned I Additional District Judge, Madurai.

+1 cc to MR.S.Mahesh Babu, ADVOCATE, SR NO:4679

trp

sva/mr/13.03.2017/3p/3c