

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No. 1529 of 1998

1.Akilandam Ammal (Deceased)

2.V.Banumathi

3.V.Santhamani

4.V.Radhamani

5.V.Arputham

6.V.Sundharamurthy ... Petitioners

(Petitioners 2 to 6 brought on record as Legal Representatives of the deceased 1st petitioner vide Order of Court dated 03.02.2016 made in C.M.P.No.29 of 2015 in C.R.P.No.1529 of 1998)

Vs

1.S.Varadarajan

2.R.P.Manoharan

3.P.Chandrasekaran

4.P.Sudhakar

5.P.Rajammal (Died)

6.P.Ramakrishnan

7.P.Natanasabapathy

8.P.Chockalingam

9.Malathi Kumaresan

10.Arul

11.Selvi

12.Valliammal

13.Krishnamoorthy

14.K.Saraswathi

15.M.Ganesan

...Respondents

(Respondents 12 to 15 are brought on record as Legal representatives of the deceased 5th respondent (P.Rajammal) vide Court order dated 25.08.2004 made in C.M.P.Nos.7064 to 7066 of 2004)

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the Judgement and decree dated 26.03.1998 and made in C.M.A.No.47 of 1995 on the file of the II Additional District Judge, Salem confirming the fair and decreetal order dated 05.04.1995 and made in R.E.A.No.761 of 1982 in R.E.P.No.155 of 1979 in O.S.No.95 of 1956, on the file of the Additional Sub Judge(Incharge), Salem.

For Petitioners : Mr.A.Edwin Prabakar

For Respondent 1 : Mr.M.Selvaraj

For Respondents 2 to 4 : Mr.V.K.Natchimuthu

For Respondent 5 : Died

For Respondents 6 to 8 &
12 to 15 : No Appearance

For Respondents 9 to 11 : Not ready in notice

सतयमेव जयते
O R D E R

This Civil Revision Petition is filed by the Judgment Debtor, challenging the order dated 26.03.1998 in C.M.A.No.47 of 1995 passed by the II Additional District Judge, Salem, confirming the order passed by the learned Additional Subordinate Judge, Salem in R.E.A.No.761 of 1982 in R.E.P.No.155 of 1979 in O.S.No.95 of 1956 on the file of the Additional Subordinate Judge, Salem.

2.The facts preceeding in filing of the revision are as follows:

One Periyanna Gounder and Raja Gounder had filed a suit in O.S.No.95 of 1956 on the file of the Sub Court, Salem, seeking partition of the properties. A preliminary decree was passed, as also a final decree. In the said final decree proceedings, the Judgment Debtors/Defendants were directed to pay mesne profits of a sum of Rs.4,925.65/- by order dated 22.12.1972.

3. Thereafter, the said Periyanna Gounder and Raja Gounder had filed Execution Proceedings in R.E.P.No.155 of 1979 to execute the order by attaching the schedule property. This schedule property was attached and brought to sale. The Judgment Debtor had filed R.E.A.No.761 of 1982 (Which is the subject matter of the revision) for setting aside the sale held on 11.12.1980. The application was moved under the provisions of Order XXI Rule 89 and Section 151 of the Code of Civil Procedure. This application was filed on 16.11.1982. Prior to the filing of this application, the Judgment Debtor had deposited the sum of Rs.5,708.20/- which was the amount due towards mesne profits together with poundage and commission charges. This amount was deposited into Court on 05.02.1981.

4. This petition was resisted by the decree holders by contending that the deposit was not an unconditional deposit and that the petition was barred by limitation. The learned Additional Subordinate Judge, Salem, after hearing both sides dismissed the said application only on the ground that the amount had not been deposited within a period of 30 days, as laid down by the Honourable Supreme Court in the Judgment reported in 1990(1) LW 364.

5. This order was taken up by way of an appeal by the Judgment Debtor's wife Akilandam Ammal, since the Judgment Debtor had died pending the Execution Proceedings in C.M.A.No.47 of 1995. The learned Additional District Judge confirmed the order passed by the Additional Subordinate Judge, Salem and dismissed the appeal. Aggrieved by the said order, the revision petitioner is before this Court.

6. Heard, Mr.A.Edwin Prabakar, learned counsel for the petitioners. The learned counsel would submit that the period of limitation for setting aside the sale was 60 days as per Article 127 of the Limitation Act and the Constitution Bench in the Judgment Dadi Jagannadham Vs. Jammulu Ramulu and others reported in (2001) 7 SCC 71 had held that in the case of a deposit for setting aside the sale, the period of limitation was 60 days from the date of sale. He would argue that the deposit

in the instant case was made by the revision petitioners on the 56th day from the date of the sale and therefore would squarely come within the period of limitation. The learned counsel for the revision petitioner would further argue that they continue to be in possession of the property and the respondents who had filed a suit in O.S.No.175 of 1981 on the file of the Principal District Munsif, Salem, had lost the said suit as the same was dismissed on 08.02.1990 .

7.Per contra, Mr.M.Selvaraj, learned counsel who has entered appearance on behalf of the first respondent/auction purchaser would contend that the conduct of the party had to be taken note of, since, after the decree in O.S.No.95 of 1956, the Judgment Debtor, Venkatachala Gounder had filed a suit for partition through his minor sons, where the validity of the decree passed in O.S.No.95 of 1956 was questioned and this suit came to be dismissed by a Judgment and Decree dated 29.11.1967 and the appeal filed in A.S.No.119 of 1968 on the file of the District Court, Salem also ended in dismissal on 15.05.1968. After the dismissal of A.S.No.119 of 1968, the said Venkatachala Gounder set up his third wife Akilandam Ammal to file a suit in O.S.No.61 of 1970, once again challenging the validity of the final decree in O.S.No.95 of 1956 and this suit was dismissed by a Judgment and Decree dated 18.02.1970. Not stopping with this, Venkatachala Gounder had also filed another suit for declaration in O.S.No.140 of 1973, on the file of the Sub Court, Salem, seeking to declare that the preliminary decree in O.S.No.95 of 1956 as null and void. This suit was dismissed by a Judgment and Decree dated 15.11.1980 and the appeal A.S.No.1231 of 1980 filed by the said Venkatachala Gounder was also dismissed.

8.Thereafter, the said Periyanna Gounder and Raja Gounder had filed R.E.P.No.155 of 1979 to execute the decree in O.S.No.95 of 1956 and by order dated 11.12.1980, the property of Venkatachala Gounder was sold in Court auction to the first respondent. The learned counsel would argue that the deposit has been made by the revision petitioners much beyond the period of limitation and the application to set aside the sale has been filed nearly two years after the sale.

9.Heard, both the learned counsels and perused the documents, which include the certified copy of the Lodgment Schedule filed by the Judgment Debtor Venkatachala Gounder before the Sub Court, Salem in R.E.P.No.155 of 1979. This Lodgment schedule has been filed on 05.02.1981 and the reverse of the Lodgment schedule would indicate that Chalan for

Rs.5,708.20/- in B.R.No.669 dated 05.02.1981 had been issued. It is further seen that the said amount had been remitted into the State Bank of India, Salem on 06.02.1981. The entire fulcrum of argument rests upon the period within which the deposit had to be made for setting aside the sale. This has been laid to rest by the constitution bench in its Judgment in Dadi Jagannadham Vs. Jammulu Ramulu and others reported in (2001) 7 SCC 71. The question that arose for consideration before the Honourable Supreme Court was as follows:

"2.The question raised in this appeal is whether the period of limitation for making deposit in an application to set aside sale of immovable property under Order 21 Rule 89 of the Code of Civil Procedure is 30 days from the date of sale [being the period prescribed in Order 21 Rule 92(2) CPC] or 60 days from the date of sale (as prescribed in Article 127 of the Limitation Act)."

10.After considering the various Judicial pronouncements particularly the Judgment in P.K.Unni case led by a Three Members Bench reported in 1990(2)2 SCC 378 equivalent to (1990) 1 LW 364 the Honourable Supreme Court observed as follows:

"14.If the rationale in P.K.Unni case is accepted, there is a manifest contradiction. As seen, the object and intention in amending Article 127 of the Limitation Act was to extend time to make deposit. This will not have been achieved if the rationale in P.K.Unni is accepted. If Order 21 Rule 92(2) CPC and Article 127 of the Limitation Act operate in different fields then it would imply that the legislature had undergone a useless formality in extending the period of limitation to file an application. Order 21 Rule 89 CPC provides that an application to set aside sale can be made if the amounts mentioned therein are deposited. Thus the deposit has to precede or be made at the same time as the application. There would thus be no purpose in permitting filing of an application after 30 days if the deposit had to be made within 30 days and the legislature would have undertaken a useless formality."

15.A plain reading of Order 21 Rule 92 CPC shows that the Court could either dismiss an application or allow an application. Order 21 Rule 89 CPC prescribes no period either for making the application or for making the deposit. The Limitation Act also

prescribes no period for making a deposit. However, Article 127 of the Limitation Act prescribes a period within which an application to set aside a sale should be made. Earlier, this was 30 days not it has been enhanced to 60 days. Unless there was a period prescribed for making a deposit, the time to make the deposit would be the same as that for making the application. This is so because if an application is made beyond the period of limitation, then a deposit made at that time or after that period would be of no use."

Ultimately, the Constitution Bench has held as follows:

"17. Viewed in this context the intention of the legislature in extending the period under Article 127 of the Limitation Act may be seen. It is very clear from the statement of Objects and Reasons, which have been set out hereinabove, that the period under Article 127 of the limitation Act was extended from 30 days to 60 days in order to give more time to persons to make deposits. The legislature has noted that the period of 30 days from the date of sale was too short and often caused hardships because judgment debtors usually failed to arrange for money within that period. The question then would be whether by merely amending Article 127 of the Limitation Act the legislature has achieved the object for which it increased the period of limitation to file an application to set aside sale."

11. In the light of the above Judgment and considering the facts that the Judgment Debtor had made the deposit on the 56th day after the sale, the order passed by the Courts below in R.E.A.No.761 of 1982 is liable to set aside and the same is hereby set aside.

In the result, this Civil Revision Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Salem.

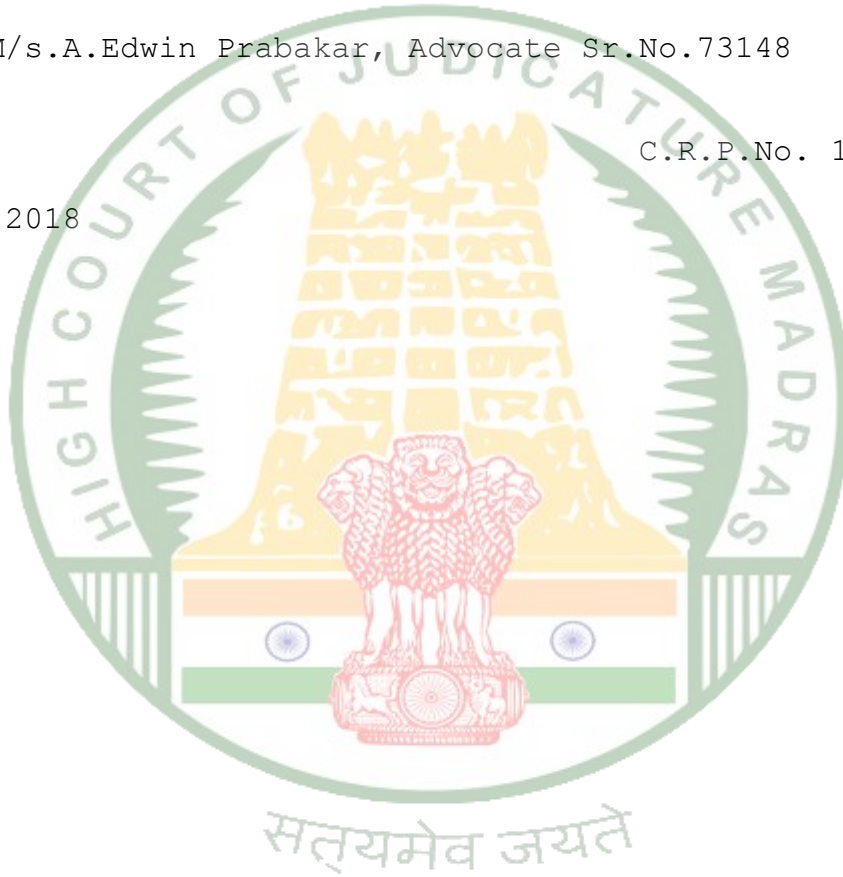
2.The learned Additional Subordinate Judge,
Salem.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+2 cc to M/s.A.Edwin Prabakar, Advocate Sr.No.73148

C.R.P.No. 1529 of 1998

VSN-II (CO)
CSL/06.12.2018



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