

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P. (NPD) .No.1680 of 2013
and M.P.No.1 of 2013

Radha Pillai

...

Petitioner

Vs.

1.Natarajan

2.Kottaiyan

....

Respondents

Prayer :- The Civil Revision Petition has been filed under Section 115 of C.P.C. against the fair and final order dated 30.11.2012 passed in E.A.No.352 of 2011 in E.P.No.23 of 2011 in O.S.No.403 of 2009 on the file of the Principal District Munsif, Tindivanam.

For Petitioner : Mr.S.Kaithamalaikumaran

For Respondent No.1 : Mr.S.Senthilnathan

Respondent No.2 : No appearance

ORDER

The instant revision has been filed challenging the order dated 30.11.2012 passed by the Principal District Munsif, Tindivanam in E.A.No.352 of 2011 in E.P.No.23 of 2011 in O.S.No.403 of 2009.

Brief facts leading to the filing of the revision:

2.The first respondent is the decree holder having obtained a decree for money dated 22.12.2009 in O.S.No.403 of 2009 against the second respondent, who is the judgment debtor. The first respondent filed EP No.23 of 2011 against the second respondent for executing the judgment and decree dated 22.12.2009 passed in O.S.No.403 of 2009.

3.It is the case of the petitioner that the execution petition was filed seeking attachment and sale of the property owned by the second respondent / judgment debtor. During the pendency of EP.No.23 of 2011, it was brought to the knowledge of the petitioner that the second respondent sold the property to the petitioner fraudulently. Therefore, E.A.No.352 of 2011 in

E.P.No.23 of 2011 in O.S.No.403 of 2009 was filed by the first respondent/decree holder under Order 1 Rule 10 CPC to implead the petitioner, who is the purchaser of the property which was the subject matter of the execution petition from the second respondent. In the affidavit filed in support of EA No.352 of 2011, the first respondent /decree holder has averred that the second respondent has fraudulently sold the property to the petitioner in order to deprive the first respondent of a security to recover his dues as per the money decree dated 22.12.2009 passed in O.S.No.403 of 2009. A counter was also filed by the petitioner in E.A.No.352 of 2011, wherein, the petitioner has stated that she is a bonafide purchaser and she is not a necessary party. The Executing Court, by its order dated 30.11.2012, allowed the impleading application filed by the first respondent in E.A. No.352 of 2011 in E.P.No.23 of 2011. Aggrieved by the order dated 30.11.2012 passed in E.A.No.352 of 2011, the instant revision has been filed by the petitioner/proposed party.

4.Heard Mr.S.Kaithamalaikumaran, learned counsel appearing for the petitioner and Mr.S.Senthilnathan, learned counsel appearing for the first respondent. Despite service of notice on the second respondent and his name having been printed in the cause list today, there is no appearance on his side.

5.According to the learned counsel appearing for the petitioner, the petitioner is an unnecessary party in the execution petition filed by the first respondent against the second respondent. He submitted that even under Section 64 of the Civil Procedure Code, only after an attachment, the Court can pass an order that private alienation of a property, which is the subject of the attachment is void. According to him, in the instant case, since there is no attachment, the petitioner being a bonafide purchaser, who purchased the property, when there was no attachment, the petitioner cannot be impleaded as a party to the execution petition filed by the first respondent against the second respondent.

6.Per contra, the learned counsel appearing for the first respondent would submit that it is the case of the first respondent as seen from the affidavit filed in support of E.A.No.352 of 2011 that the second respondent /judgment debtor has fraudulently transferred the property to the petitioner. Further, he contended that under Order 1 Rule 10 CPC for the effective determination of the real matter in dispute, any person can be impleaded as a party to the proceeding. According to him, admittedly, the property was purchased by the petitioner after a filing of the execution petition and therefore, the petitioner is a necessary party to be impleaded in the execution petition.

DISCUSSION:

7.This Court has examined the impugned order as well as the affidavit filed in support of E.A.No.352 of 2011 as well as the counter affidavit filed by the petitioner. It is the case of the first respondent/decreed holder that after filing of the execution petition, it was brought to his knowledge that the petitioner has fraudulently purchased the property from the second respondent/judgment debtor to deprive the first respondent of a security to recover his dues. It is also admitted by the petitioner that the property was purchased only after the execution petition was filed by the first respondent, but it is his case that he is a bonafide purchaser and the property was purchased prior to the receipt of the notice in the execution petition filed by the first respondent. For the effective adjudication of the execution petition, the petitioner is certainly a necessary party as he has purchased the property after filing of the execution petition by the first respondent/decreed holder, who has sought for attachment and sale of the same property, it was earlier owned by the second respondent / judgment debtor and presently owned by the petitioner, who has purchased the same after filing of the execution petition filed by the first respondent. Having alleged that the sale in favour of the petitioner is a fraudulent transfer, the petitioner is definitely a necessary party for the effective adjudication of E.P.No.23 of 2011. The trial Court has rightly allowed E.A.No.352 of 2011 filed by the first respondent to implead the petitioner as a party to E.P.No. 23 of 2011. This Court does not find any infirmity in the said order.

Accordingly, the civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

sms
To

Sub Assistant Registrar

The Principal District Munsif, Tindivanam.

+1 cc to Mr.A.K.Kumarasamy, Advocate, SR No.83517

+1 cc to Mr.S.Senthilnathan, Advocate, SR No.83323

ks(co)
ssm(21/12/18)

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