

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (NPD) Nos.3185 and 3186 of 2017
and C.M.P.Nos.14889 and 14890 of 2017

C.R.P.No.3185 of 2017

K.M.Balasubramaniam

.. Petitioner

vs

1.C.Loganathan

2.N.G.Deivasigamani

.. Respondents

The Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 04.07.2017 passed in E.A.No.366 of 2016 in E.P.No.292 of 2006 in O.S.No.656 of 2002 on the file of the learned First Additional Sub-Court, Erode by allowing this Civil Revision Petition.

C.R.P.No.3186 of 2017

K.M.Balasubramaniam

.. Petitioner

vs

N.G.Deivasigamani

.. Respondent

The Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 04.07.2017 passed in E.A.No.277 of 2008 in E.P.No.292 of 2006 in O.S.No.656 of 2002 on the file of the learned First Additional Sub-Court, Erode.

For Petitioner ... Mr.N.Manokaran
(in both petitions)

For Respondents ... Mr.D.Selvaraju
for R.1
(in C.R.P.No.3185 of 2017)

Mr.V.P.Sengottuvel
for R.2
(in C.R.P.No.3185 of 2017
(and for R.1 in C.R.P.No.3186 of 2017)

COMMON ORDER

C.R.P.No.3185 of 2017 has been filed to set aside the fair and decretal order dated 04.07.2017 passed in E.A.No.366 of 2016 in E.P.No.292 of 2006 in O.S.No.656 of 2002 by the learned First Additional Sub-Court, Erode.

C.R.P.No.3186 of 2017 has been filed to set aside the fair and decretal order dated 04.07.2017 passed in E.A.No.277 of 2008 in E.P.No.292 of 2006 in O.S.No.656 of 2002 by the learned First Additional Sub-Court, Erode.

2.The brief of facts of the case are as follows:

(i)The first respondent/plaintiff filed a suit in O.S.No.656 of 2002 against the petitioner/defendant, seeking for recovery of money. In the aforesaid suit, an exparte decree was passed on 08.09.2004. Thereafter, the first respondent filed E.P.No.87 of 2005 in O.S.No.656 of 2002 for arrest of the petitioner and the same was closed. Hence, the first respondent filed E.P.No.292 of 2006 for auctioning the property. In the meantime, on 10.04.2006, K.M.Balasubramaniam, the petitioner, sold the property to one M.Elangovan @ Karuppusamy and R.Sengodan for Rs.23,50,000/- by executing a registered sale agreement dated 13.02.2006. On 27.09.2007, the subject matter of the property was purchased by one Deivasigamani, who is an auction purchaser, in the auction conducted by the Court, for a sum of Rs.4,00,500/-. Subsequently, the aforesaid sale was confirmed and the sale certificate was issued on 10.12.2007 in favour of the said Deivasigamani.

(ii)Thereafter, the second respondent/Deivasigamani, the auction purchaser filed E.A.No.277 of 2008 against the petitioner for delivery of possession and the said application was dismissed on 04.07.2017. The petitioner filed an application in I.A.No.129 of 2009 under Order 9

Rule 13 of CPC to condone the delay of 1581 days to set aside the exparte decree dated 08.09.2004 passed in O.S.No.656 of 2002 and the same was dismissed on 29.10.2009.

(iii)Challenging the order dated 29.10.2009, the petitioner filed Civil Revision Petition No.179 of 2010 before this Court. This Court, by order dated 13.07.2011, dismissed the said Civil Revision Petition. Challenging the said order, the petitioner preferred SLP (civil) No.31300 of 2011 before the Hon'ble Supreme Court and the same was dismissed. Hence, the exparte decree passed by the trial Court has become final.

(iv)Thereafter, the petitioner, field an application in E.A.No.136 of 2011 under Section 47 C.P.C. and the same was dismissed as barred by limitation on 06.11.2015. Further, one Parimala Devi, filed an application in E.A.No.388 of 2011 under Section 47 of CPC to implead herself as she is a necessary party in E.A.No.136 of 2009 claiming that the sale proceedings conducted under auction was irregular and illegal, the said application was dismissed. Challenging the order dated 06.11.2015, the said Parimala Devi filed C.R.P.No.1239 of 2014 before this Court and the same was dismissed. As against the said order dated 06.11.2015, the petitioner filed C.R.P.No.1097 of 2016 and the same was dismissed on 10.02.2017. In

the meantime, the petitioner filed E.A.No.366 of 2016 in E.P.No.292 of 2006 in O.S.No.656 of 2002 to permit him to deposit the entire decree amount with subsequent interest and the cost of the suit proceedings including other charges of Rs.2,43,445/-. By order dated 04.07.2017, the trial Court dismissed E.A.No.366 of 2016. Aggrieved by the orders dated 04.07.2017 passed in E.A.No.366 of 2016 and E.A.No.277 of 2008, C.R.P.Nos.3185 and 3186 of 2017 respectively, have been filed by the petitioner before this Court.

3.The learned counsel for the petitioner submitted that the value of the suit property, at the time of auction would fetch more than Rs.1 Crore, the respondents 1 and 2 have colluded together and purchased the aforesaid property through auction for a meagre sum of Rs.4,00,500/-. Therefore, the petitioner filed instant application in E.A.No.366 of 2016 in E.P.No.292 of 2006 to deposit the entire decree amount, subsequent interest and costs of the suit proceedings including poundage charges to the first respondent i.e., Rs.2,43,445/- and record the full satisfaction of the decree.

4.The learned counsel for the petitioner further submitted the respondents 1 and 2 are the close relatives, they have colluded and

played fraud on the petitioner and purchased the property through Court auction for meagre amount, which would fetch more than Rs.1 Crore. The petitioner can file an application under Section 151 of CPC at any stage by raising such allegations. Moreover, the order passed by this Court in the earlier Civil Revision Petition, does not bind the petitioner. Therefore, the present Civil Revision Petition has been filed against the impugned order passed by the Court below.

5.It is a specific case of the petitioner that, earlier, an application has been filed under Section 47 of CPC and the same was rejected by the Court below. When the petitioner has proved that the respondents purchased the property by colluding themselves and by committing fraud on the petitioner, the Court below, without considering the plea, simply dismissed the applications filed by the petitioner is erroneous and contrary to law.

6.In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in **Nani Gopal Paul vs. T.Prasad Singh and Others (1995 [3] SCC 579)** wherein, paragraph No.4 reads as follows:

"We are of the view that we can take suo motu judicial notice of the illegality pointed out

by the Division Bench, committed by the Single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the court receiver as approved by the learned Single Judge. Confirmation of sale was illegal. Though, as contended by Shri Ganesh that normally an application under Order 21, Rule 89 or Rule 90 or under Section 48 CPC need to be filed within limitation to have the sale conducted by the court set aside and that procedure need to be insisted upon, we are of the view that this Court or appellate court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting court sales. We are informed and it is not disputed that the appellant had deposited only Rs.5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal."

7.The learned counsel for the petitioner, in support of his contention, relied on yet another decision of this Court in **G.Chandrasekaran vs. Palaniappa Company and others (AIR 2006 MADRAS 104)** wherein paragraph No.24 reads as follows:

"Generally speaking all irregularities are

cured by the issuance of the Sale Certificate. In other words, on the issue of Sale Certificate, the auction-purchaser's title becomes final and the right to possession becomes impeachable. Though the confirmation Of sale and the issuance of Sale Certificate is prima facie evidence of title of the auction-purchaser, the circumstances brought forth in this case and the abuse of process of Court in the Court auction sale compel the Executing Court to take suo motu notice of the abuse of the process of Court. In such circumstances of abuse of process of Court, it is not as if the Court is powerless. The Court has got exorbitant power to take note of such things when they are brought to the notice of the Court. Taking suo motu judicial notice of the illegality in conducting of the sale, learned Counsel for the sixth respondent has relied upon the decision reported in *Nani Gopal Paul v. T. Prasad Singh* (1995 [3] SCC 579: (1995 AIR SCW 3078) wherein the Supreme Court has observed :

...We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the

view that the circumstances are sufficient to vitiate the validity of the sale conducted by the Court Receiver as approved by the learned single Judge. Confirmation of sale was illegal. Though, as contended by Shri Ganesh that normally an application under Order 21, Rule 89 or Rule 90 or under Section 47, CPC need to be filed within limitation to have the sale conducted by the Court set aside and that procedure need to be insisted upon, we are of the view that this Court or appellate Court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting Court sales. We are informed and it is not disputed that the appellant had deposited only Rs. 5 lakhs and balance amount was assured to be deposited, only after delivery of possession. That also would be illegal....

The Supreme Court has taken suo motu judicial notice of the illegality in the sale and set aside the sale even after the expiry of period of limitation prescribed therefor. Viewed in the light of the above decision, the Executing Court cannot be said to have exceeded its limits in setting aside the sale recalling the Sale Certificate in the proceedings under Order XXI, Rule 85, CPC. When such irregularity/fraud is

brought to the notice of the Court, the Court cannot remain a mute spectator solely because the sale was already confirmed."

8. In the light of the decision of the Hon'ble Supreme Court in **Nani Gopal Paul vs. T.Prasad Singh and Others**, cited supra, the learned counsel for the petitioner submitted that if the application is filled within the limitation period to set aside the sale conducted by the Court and the procedure need to be insisted upon, the Court, does not remain a mute or helpless spectator to the obvious and manifest illegality committed in conducting Court sales. Therefore, in the present case also, it is clear that there is an abuse of process of illegality committed by the second respondent in purchasing the property through auction sale conducted by the Court below. Hence, the impugned order passed by the Court below is liable to be set aside.

9. Per contra, the learned counsel for the first respondent, submitted that in the affidavit filed in support of the application, the petitioner has alleged that the respondents have colluded together and the second respondent purchased the property in the auction for Rs.4,00,500/-, which is worth about more than Rs.one Crore. But, the petitioner, has not produced any material documents before the

trial Court, to prove his allegation.

10.The learned counsel for the first respondent further submitted that, in the earlier round of litigation, the petitioner filed E.A.No.136 of 2009 under Section 47 of CPC, wherein, the Court below rejected the contention of the petitioner. The petitioner, now, raised the same ground, which has already been raised and the same was dismissed.

11.The learned counsel for the first respondent has relied the order passed in C.R.P.No.1097 of 2016 filed by the revision petitioner, and the same is reported in **(2017 [1] MWN (Civil) 372)**.

12.Relying on the aforesaid decision, the learned counsel for the respondent submitted that, this Court has held that the property was sold on 27.09.2007, after following due procedure, in accordance with law and the same was also confirmed. Thus, the mandatory provision has been followed and auction was conducted, there is no illegality or irregularity in the auction conducted by the Executing Court as alleged by the revision petitioner and consequently, sale was confirmed. In the light of the decision cited supra and in view of the foregoing reasons, the application filed by the petitioner under Section 47 of CPC is not maintainable and the Court below rightly dismissed the E.A.No.366 of 2016. Therefore, the C.R.P.No.3185 of 2017 filed by

the petitioner is liable to be dismissed.

13. Heard submissions made by the learned counsel for both sides and perused the materials available on record.

14. The following factual matrix of the case is not in dispute:

(i) Originally, the respondent filed a suit in O.S.No.656 of 2002 for recovery of money and in the said suit, the petitioner was set exparte and exparte decree was passed on 08.09.2004.

(ii) The first respondent filed E.P.No.292 of 2006 for auctioning the aforesaid property. The second respondent was a successful auction purchaser of the suit property and the sale was confirmed in his favour on 27.09.2007 for Rs.4,00,500/- . The sale certificate was also issued in the name of the second respondent.

(iii) The second respondent filed E.A.No.277 of 2008 against the petitioner for delivery of possession.

(iv) The petitioner filed E.A.No.136 of 2009 to set aside the Court auction sale on the ground that there was no proper publication of sale and that the decree was inexecutable under Section 47 of CPC and the said application was dismissed.

(v) Challenging the order of dismissal, the petitioner filed C.R.P.No.1097 of 2016 before this Court and this Court, by considering

all the points raised by the petitioner, concluded that no illegality or irregularity in the sale conducted by the Court below and dismissed the said Civil Revision Petition on 10.02.2017 and the said order has become final as no appeal has been preferred against the aforesaid orders.

(vi)The petitioner filed E.A.No.366 of 2016 to deposit the entire decree amount and the same was dismissed.

(vii)To exhaust his remedy, the petitioner filed the present C.R.P.No.3185 of 2017 against the order passed in E.A.No.366 of 2016.

15.On perusal of the decision cited supra in (earlier C.R.P.(NPD)No.1097 of 2016 filed by the petitioner), wherein paragraph Nos.14, 22 and 23 read as follows:

"14.Now, the first point to be decided is whether the Revision petitioner/Judgment-debtor has locus standi to file an Application in E.A.No.136 of 2009 to set aside the Sale?

It is pertinent to note that the Revision Petitioner/Judgment-debtor has no interest over the property on the date of the aforesaid transactions. Furthermore, as already stated,

even though the property was attached on 28.1.2003 and the same was made absolute on 7.2.2003, the petitioner sold the property in favour of one M.Elangovan @ Karuppasamy on 10.4.2006 and he in turn sold the property in favour of one Parimala Devi, who is the wife of the Petitioner's Advocate on 18.3.2009. Thereafter, the Revision Petitioner/Judgment-debtor had filed this Application on 18.4.2009 in E.A.No.136 of 2009 to set aside the Sale on the ground that there was no proper Publication of Sale and that the Decree itself is in executable. But as already stated, on the date of filing of the Application in E.A.No.136 of 2009 and also on the date of the Court Auction viz., 27.09.2007, the Revision petitioner/Judgment-debtor is not the owner of the property and he is not having any right or interest in the property. In such circumstances, I am of the view that the Revision petitioner/Judgment-debtor has locus standi to file the Application.

22. On perusal of the typed set of papers would show that the property was attached before judgment and on filing of the Execution Petition, Notice under Order 21, Rule 66, C.P.C was issued. Since he was absent, he was set

ex parte. Hence, the property was sold on 27.09.2007 after following due procedures in accordance with law and the same was also confirmed. Thus, the mandatory provision has been followed by the Court and hence, there is no illegality or irregularity committed by the Executing Court while conducting the Auction and confirming the Sale.

23. In such circumstances, I am of the view that the argument advanced by the learned Senior Counsel appearing for the Revision Petitioner that no Notice has been issued, does not merit acceptance. Further, as per the decision A.P.V. Rajendran v. S.A. Sundararajan and Others, AIR 1980 Mad. 123, if the Sale is sought to be set aside on the ground of material irregularity in publishing and conducting the sale within the meaning of Order 21, Rule 90, the Section 47 cannot come into play at all, and the Sale could be set aside only by invoking Order 21, Rule 90. So, the Revision Petitioner / Judgment-debtor ought to have filed an Application within a period of 60 days from the date of Sale, as per Article 127. But, the Sale was conducted on 27.09.2007 and the present Application came to be filed only on 18.04.2009. Hence, I am of the view that only

in Order to circumvent the period of limitation, the Revision Petitioner/Judgment-debtor has filed the Application under Section 47, C.P.C. Therefore, the petition filed under Section 47, C.P.C. is not maintainable"

In view of the aforesaid paragraphs, the present application filed under Section 47 C.P.C. is not maintainable both on the ground of Locus Standi and on merits.

16. In paragraph No.4 of the decision in **Nani Gopal Papul vs. T.Prasad Singh and Others**, cited supra, the learned counsel for the petitioner has made an allegation that the value of the property is more than Rs.1 Crore, whereas the second respondent has purchased the property only for a sum of Rs.4,00,500/-. Whereas, the learned counsel for the first respondent submitted that, the petitioner sold the property to one M.Elangovan @ Karuppasamy on 10.04.2006 though the property was attached for public auction and thereafter, the second respondent purchased the very same property through the Court auction held on 27.09.2007 for Rs.4,00,500/-. Hence, the petitioner sold the scheduled property to one Primala Devi, who is happened to be wife of the petitioner's Advocate. Hence, there is no force in the argument of the petitioner for the interference of the order

passed by the Court below.

17.Further, the decision in **Nani Gopal Paul v. T.Prasad Singh and Others**, cited supra, in paragraph No.4, it is seen that the Court would not remain a mute or helpless spectator to obvious and manifest, when the illegality was committed in conducting Court sales. As stated in the aforesaid paragraph, the petitioner has not satisfied that there is irregular and illegal in the sale proceedings.

18.In the earlier round of litigation, in C.R.P.No.1097 of 2016, this Court has held that "there is no illegality or irregularity committed by the Executing Court while conducting the auction and confirmed the sale" and the aforesaid order has continued by the Supreme Court in SLP. Therefore, the decision relied by the petitioner will not apply to the facts of the case.

19.In the present case on hand, the same allegation has been raised by the petitioner in the application filed under Section 47 of C.P.C. Apart from that, the petitioner has not come up with fresh materials, while filing the present application and he has not placed any material documents to prove the allegation made against the first

respondent.

20. It is useful to extract the relevant provision under Order 21 Rule 90 (3) C.P.C., and the same reads as follows:

"No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could not have taken on or before the date on which the proclamation of sale was drawn up".

21. From the aforesaid provision, admittedly, the petitioner has not filed any application before proclamation of sale and he filed the application, after the sale certificate was granted in favour of the second respondent/purchaser.

22. In view of the foregoing reasons, the decisions cited supra of the Hon'ble Supreme Court and this Court, there is no illegality or irregularity in the auction sale conducted by the Executing Court in the absence of any material evidence to prove the allegation made by the petitioner in the application filed in E.A.No.366 of 2016, this Court is not inclined to interfere with the order passed by the Court below.

23.In the result, Civil Revision Petition No.3185 of 2017 is dismissed. No costs.

In view of the order passed in Civil Revision Petition No.3185 of 2017 the Civil Revision Petition No.3186 of 2017 is also dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2018

Speaking/Non Speaking order.

Index: Yes/No.

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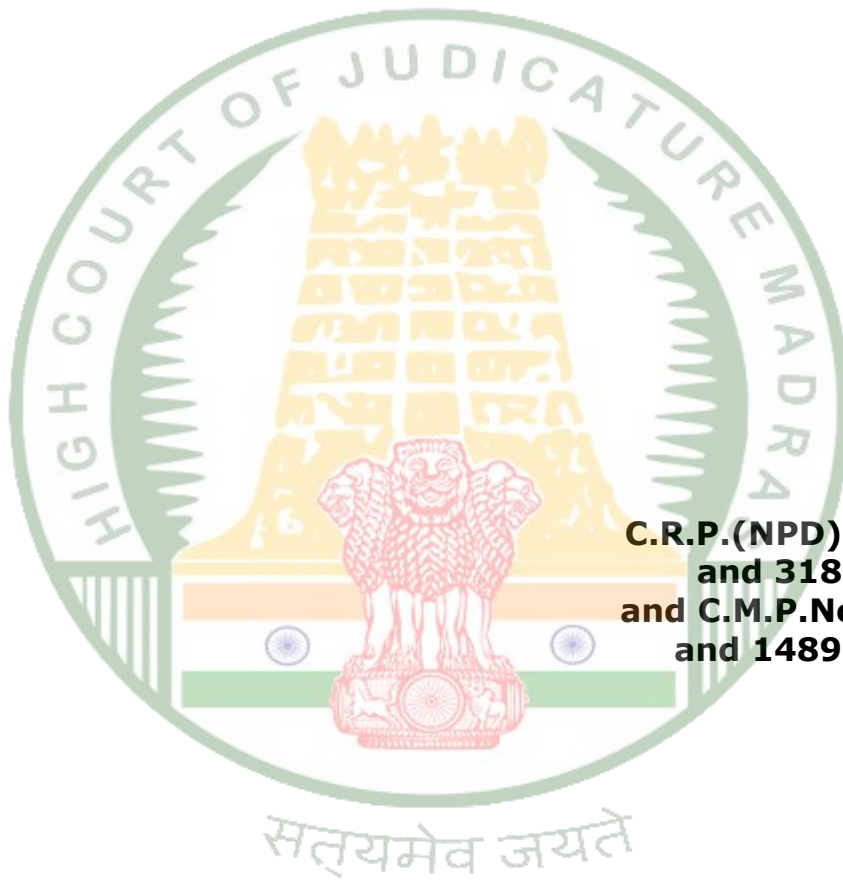
To

The I Additional Subordinate Judge,
Erode.

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D.KRISHNAKUMAR,J.

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Date: 27.03.2018