

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD)No.276 of 2003

1.Yasothammal ... Petitioner/Petitioner
2.P.Sundaramurthi ... 6th Respondent/Petitioner
3.Amudha ... 5th Respondent/Petitioner

Vs.

1.Kamatchi Ammal ... Decree Holder/1st Respondent/
Respondnet
2.Lakshmi ... Acution Purchaser/4th Respondent/
Respondent

Revision filed under Section 115 of Code of Civil Procedure, against the fair and decretal dated 22.11.2002 in E.A.No.158 of 1992 in E.P.No.380 of 1989 in O.S.No.241 of 1983 on the file of the Principal District Munsif Court, Chengee.

For Petitioners : Mr.D.Govinda Reddy

For Respondents : Mr.P.Srinivas (for R2)
No Appearance (for R1)

सत्यमेव जयते
ORDER

This revision is directed against the order dated 22.11.2002 passed in E.A.No.158 of 1992 in E.P.No.380 of 1989 in O.S.No.241 of 1983 on the file of the learned Principal District Munsif Court, Gingee, dismissing the petition filed by the petitioner therein to set aside the sale held on 31.10.1991.

2. Since filing of the suit by the plaintiff for maintenance and the decree passed by the trial Court directing the first defendant to pay a sum of Rs.75/- per month to the plaintiff towards maintenance till her death and to pay Rs.2,700/- towards past maintenance and also creating charge over plaint 'B' schedule property are not in dispute, it is not necessary for

this Court to once again state those facts in this revision.

3. Since the first defendant has failed to pay maintenance amount, the plaintiff filed E.P.No.380 of 1989 for bringing the scheduled mentioned property for sale and realise the amount. Despite several opportunities, the first defendant has not paid the amount and finally, the schedule mentioned property was sold in Court auction on 31.10.1991 to one Lakshmi. After decree, the original defendants 1 and 2 reported dead.

4. E.A.No.158 of 1992 has been filed by the petitioner therein seeking to set aside the Court auction sale alleging that she is the second wife of the second respondent/Pandurangan. The marriage between the first respondent and the second respondent was dissolved before the panchayatars. Thereafter, marriage between the petitioner and the second respondent was solemnised in 1966 and out of the wedlock two children were born. According to the petitioner, the schedule mentioned property originally owned by the second respondent and the second respondent sold the same to the third respondent under a registered sale deed dated 16.12.1980 and from the date of the sale, the third respondent was in possession and enjoyment of same. On 27.05.1985, the third respondent executed a settlement deed in favour of the petitioner and her children. While things stood thus, the petitioner came to know that the first respondent filed suit in O.S.No.241 of 1983 for maintenance and also filed E.P.No.161 of 1986 on the file of the learned District Munsif Court, Tiruvannamalai, wherein a house property situated at Vedanthavadi village was brought for sale. The petitioner also came to know that the first respondent has filed E.P.No.380 of 1989 seeking to brought the schedule mentioned property for sale and Court auction sale took place. The fourth respondent is the auction purchaser of the schedule mentioned property held on 31.10.1991. According to the petitioner, the sale held on 31.10.1991 is not valid on the ground that the sale has not been properly published and the petitioner is not a party to aforesaid proceedings. Hence, she prays for setting aside the sale held on 31.10.1991.

5. Resisting the petition, the first respondent filed the counter stating that the petition to set aside the sale is barred by limitation. As per the statutory provision, petition to set aside the sale has to be filed within 60 days, whereas the petition has been filed beyond 60 days. Therefore, the petition is not maintainable. According to the first respondent, the sale deed dated 16.12.1980 between the second respondent and the third respondent was a forged one. Further, the settlement deed dated 27.05.1985 alleged by the petitioner was executed during the pendency of the suit, where the first

respondent also sought charge over the petition mentioned property. Therefore, the settlement deed is not binding on the first respondent. It is stated that based on the invalid settlement deed only, the petitioner has filed the petition seeking to set aside Court auction sale and the same need not be looked into. Hence, the first respondent prays for dismissal of the petition.

6. The fourth respondent/auction purchaser has filed the counter stating that the petition is not maintainable either in law or on facts. The provisions of law quoted in the petition is not correct. As per Section 47 CPC, the third party has no right to file such petition. The description of property in the settlement deed and the petition mentioned property are entirely different. The petitioner is bound by the decree as well as the charge created over the property made in O.S.No.241 of 1983. According to the fourth respondent, she is a bonafide purchaser and she had already paid all the requisite fees. Hence, prays for dismissal of the petition.

7. Before the trial Court, on the side of the petitioner, P.W.1 to P.W.4 were examined and Exs.P1-settlement deed was marked. On the side of the respondents, R.W.1 to R.W.3 were examined and Exs.R1 to R3 were marked. Court Exhibits Exs.C1 and C2 were also marked.

8. Upon consideration of the oral and documentary evidence, the trial Court dismissed the petition. Aggrieved by the same, the petitioner and her children, who were shown as respondent Nos.5 and 6 in E.A.No.158 of 1992, have filed this revision petition.

9. I heard Mr.D.Govinda Reddy, learned counsel appearing for the petitioners and Mr.P.Srinivas, learned counsel appearing for the contesting second respondent.

10. The learned counsel for the petitioners submitted that the trial Court failed to consider the fact that petition to set aside the sale has been filed soon after the knowledge of the petitioner in E.A.No.158 of 1992, which comes within the limitation period. He submitted that the trial Court ought to have allowed the petition to set aside the Court auction sale on the ground that the petitioner and the respondents 5 and 6 were not shown as respondents as their legal rights were affected and they are the real aggrieved parties. According to the learned counsel, there were irregularities in the Court auction sale.

11. The learned counsel for the second respondent submitted that there were no irregularities in conducting the sale and the second respondent herein is bonafide purchaser. He submitted

that the trial Court has rightly dismissed the petition both on the ground of limitation as well as on merits and the same need not be interfered with.

12. The point arises for consideration is whether the trial Court was right in dismissing the petition seeking to set aside the sale held on 31.10.1991?

13. According to the petitioners, the second respondent in E.A.No.158 of 1992 sold the property owned by him to the third respondent Munusamy Gounder in the said Execution Application under the sale deed dated 16.12.1980 and from the date of purchase, he was in possession and enjoyment of the same. After purchase, Munusamy Gounder, who is the father of the first petitioner herein has executed a settlement deed in favour of the petitioners under settlement deed dated 25.5.1987. Therefore, the petitioners have right over the property in question. It is the say of the petitioners that they are not parties to E.P.No.380 of 1989 and the Court auction sale was conducted behind their back.

14. Qua sale deed dated 16.12.1980 allegedly executed by the second respondent in favour of the third respondent in E.A.No.158 of 1992 is concerned, the same has been elaborately dealt with by the trial Court in the suit itself and finally held that the sale deed dated 16.12.1980 executed by Pandurangan in favour of Munusamy Gounder is not a valid one. When such finding was arrived at by the trial Court, the petitioners have no right to raise the same plea once again in this revision. There is no proof showing that as against the verdict in O.S.No.241 of 1983, the aggrieved parties either the first defendant or the second defendant in the suit have filed any appeal. Therefore, the trial Court was right in saying that when the sale deed dated 16.12.1980 itself is not a valid one, Munusamy Gounder has no right to execute the settlement deed in favour of the petitioners and based on the settlement deed, the petitioners cannot claim any right over the property in question.

15. Coming to the limitation aspect, in its order, the trial Court recorded that the Court auction sale was held on 31.10.1991 and petition to set aside the sale was filed on 31.12.1991. The trial Court, in its order, also held that petition to set aside the sale has been filed beyond 60 days. It is pertinent to point out that how the petition to set aside the sale has been barred by limitation has been elaborately stated by the trial Court in paragraph 7 of its order. Therefore, as rightly held by the trial Court, there is a delay in filing the petition to set aside the sale.

16. On a perusal of the records, I find that the property in question has been sold to the second respondent herein for a sum of Rs.28,590/- on 31.10.1991. On the same day itself, the auction purchaser has deposited one-fourth amount and thereafter, three-fourth amount was deposited on 14.11.1991. She has also paid Rs.20,002/- towards execution of sale certificate by the Court. Thus, the second respondent/auction purchaser has deposited full amount for the sale held on 31.10.1991.

17. It is to be noted that the other records also reveal that the sale was conducted after due proclamation. In the Court auction sale, apart from the second respondent, two other persons were also participated and the second respondent was the highest bidder. Therefore, the trial upon considering the oral and documentary evidence produced before it and also after perusing the material papers available on record, rightly dismissed the petition holding that there was no irregularity in the Court auction sale held on 31.10.1991 and the fourth respondent was the bonafide purchaser. For the foregoing reasons, I do not find any valid ground to interfere with the order of the trial Court.

18. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

vs
To

The District Munsif, Gingee.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104 (2 copies)

+1cc to Mr.P.Srinivas, Advocate, S.R.No.31395

+1cc to Mr.D.Govinda Reddy, Advocate, S.R.No.30932

C.R.P. (NPD)No.276 of 2003

pvs(co)
cs/13/06/18