

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4423 of 2013 & 891 of 2014
and M.P.Nos.1 of 2013 & 1 of 2014
and C.M.P.No.12567 of 2017

N.Uthiraraj

.. Petitioner in
C.R.P.No.4423/2013

1.E.P.S.Rangaraj
2.E.P.Shanmugam
3.Maragatham
4.E.P.S.Singaravel
5.S.Sadasivam
6.A.Angaleswari

.. Petitioners in
C.R.P.No.891/2014

Vs.

1.Messers Krishna Chit Fund
Rep by its Proprietor
P.Krishnamoorthi Chettiar,
Old Door No.7, New Door No.26,
Vellaiyammal Lay out,
Oothukaadu Road,
Pollachi Taluk.

2.E.P.S.Rangaraj

3.E.P.Shanmugam, (Died)
Rep by his heirs

4.Maragatham
5.E.P.S.Singaravel
6.S.Sadasivam

7.A.Angaleswari

.. Respondents in
C.R.P.No.4423/2013

1.M.Uthiraraj

2.Messers Krishna Chit Fund
Rep by its Proprietor
P.Krishnamoorthi Chettiar
Old Door No.7, New Door No.26,
Vellaiyammal Lay out,
Oothukaadu Road,
Pollachi Taluk.

.. Respondents in
C.R.P.No.891/2014

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the judgment and decree dated dated 15.07.2013 made in C.M.A.No.19 of 2010 on the file of the Sub Court, Pollachi, confirming the order dated 05.10.2010 made in E.A.No.179 of 2008 in E.A.No.210 of 2005 in E.P.No.328 of 1996 on the file of the District Munsif, Pollachi.

(In C.R.P.No.4423/2013)

For Petitioner : Mr.Dr.A.Thiyagarajan,
Senior Counsel
for Mr.S.Ramesh Kumar

For R1 : Mr.T.Murugamanickam,
Senior Counsel
for Zeenath Begum

For R2 : Died

(In C.R.P.No.891/2014)

For Petitioners : Mr.Dr.A.Thiyagarajan,
Senior Counsel
for Mr.S.Ramesh Kumar

For R2 : Mr.T.Murugamanickam,
Senior Counsel
for Zeenath Begum

COMMON ORDER

These Civil Revision Petitions are filed to set aside the judgment and decree dated dated 15.07.2013 made in C.M.A.No.19 of 2010 on the file of the Sub Court, Pollachi, confirming the order dated 05.10.2010 made in E.A.Nos.179 of 2008 in E.A.No.210 of 2005 in E.P.No.328 of 1996 on the file of the District Munsif, Pollachi.

2.The parties and the issues involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The parties are referred to as per their ranks in E.A.No.179 of 2008. The petitioner in C.R.P.No.4423 of 2013/first respondent in C.R.P.No.891 of 2014 is 7th respondent, 1st respondent in C.R.P.No.4423 of 2013/second respondent in C.R.P.No.891 of 2014 is the petitioner and respondents 2 to 6 in C.R.P.No.4423 of 2013 /petitioners in C.R.P.No.891 of 2014 are the respondents 1 to 6 in E.A.No.179 of 2008 in E.A.No.210 of 2005 in E.P.No.328 of 1996 on the file of the District Munsif, Pollachi. Petitioner and respondents in C.R.P.No.4423/2013 are the appellant and respondents in C.M.A.No.19 of 2010 on the file of the Sub Court, Pollachi.

4.The petitioner, M/s.Krishna Chit Funds filed arbitration O.P.No.6 of 1993 against first respondent and one E.P.Shanmugam Chettiar before the Registrar of Chits, Tirupur. After the death of E.P.Shanmugam Chettiar, the respondents 3 to 6 were impleaded as legal heirs of the deceased E.P.Shanmugam Chettiar. The Registrar of Chits, Tirupur, by the order dated 29.06.1993 passed an award. The petitioner filed E.P.No.328 of 1996 for attachment of sale of the properties belonging to the respondents 1 to 6. Auction sale was ordered. The petitioner obtained permission to bid in auction and the set off the amounts due to them from and out of the sale price. The petitioner was successful bidder in auction and sale certificate was issued in the name of the petitioner. The petitioner filed E.A.No.210 of 2005 in E.P.No.328 of 1996 for delivery of possession. When the Court amin went to take delivery of possession, the 7th respondent obstructed the same on the ground that he is the tenant and he cannot be evicted. The petitioner filed E.A.No.179 of 2008 for removal of obstruction by the 7th respondent. According to the petitioner, the suit property is vacant land. The 7th respondent is not tenant. He was obstructing delivery at the instigation of the respondents 1 to 6. The respondents 1, 3 to 6 were called absent and set exparte. The second respondent was reported 'dead'.

5.The 7th respondent filed counter and opposed the sale on following grounds: (i) He is the tenant under respondents 1 to 6 and he cannot be removed for execution of decree obtained against the respondents 1 to 6. (ii) The petitioner obtained award after his claim was barred by limitation. (iii) The petitioner did not issue mandatory notice under Section 33(1) of the Chit Funds Act (hereinafter referred to as the Act). (iv) The auction was not conducted properly. Originally, the auction date was fixed on 14.04.2000 and that day being a holiday, it was adjourned to 17.04.2000. No proper notice was issued for the adjourned date of auction. The petitioner was the sole person participated in the auction and highest bid was less than the decretal amount.

6.Before the learned Judge, P.Krishnamoorthi Chettiar, the Proprietor of the petitioner was examined as P.W.1 and marked Ex.P1, the sale certificate dated 18.10.2004 issued by the District Munsif, Pollachi in favour of the petitioner. The respondents did not let in any oral evidence, but marked Ex.R1, Award dated 29.03.1993 passed in A.No.6 of 1993 by the Deputy Registrar of Chits, Tiruppur.

7.The learned Judge, considering the materials on record and Sections 32 and 33(1) of the Act and judgments relied on by the parties, rejected all the objections of the 7th respondent and allowed E.A.No.179 of 2008 filed by the petitioner.

8.Against the said order dated 05.10.2010, made in E.A.No.179 of 2008, the 7th respondent filed C.M.A.No.19 of 2010. Before the learned Appellate Authority, the respondents 1, 3 to 6 were set exparte and learned Appellate Authority considering the contentions of the 7th respondent and materials available on record and order of the learned Judge, dismissed the appeal.

9.Against the said judgment and decree dated 15.07.2013 made in C.M.A.No.19 of 2010, confirming the order dated 05.10.2010 made in E.A.No.178 of 2008 in E.A.No.210 of 2005 in E.P.No.328 of 1996, 7th respondent filed C.R.P.No.4423 of 2013 and respondents 1 to 6 filed C.R.P.No.891 of 2014.

10.The learned Senior counsel appearing for the respondents 1 to 6/petitioners in C.R.P.No.891 of 2014 contended that respondents 1 to 6/petitioners in C.R.P.No.891 of 2014 are willing to

pay the E.P amount together with reasonable interest. On the other hand, the learned Senior counsel for the petitioner in E.A.No.179 of 2008//Krishna Chit Fund contended that award is dated 29.03.1993 and sale certificate was issued in favour of the petitioner on 18.10.2004. The petitioner/decreed holder in E.A.No.179 of 2008 is unable to enjoy the fruits of the award passed in his favour and even after purchase, the petitioner is unable to take possession of the property. The respondents are colluding together and filed frivolous, vexatious suit to drag on the proceedings. The learned counsel for the petitioner in E.A.No.179 of 2008 further contended that respondents 1 to 6 have not challenged the auction sale and also not filed any counter in E.A for removal of possession and therefore, the Civil Revision Petition filed by them is not maintainable.

11.The learned counsel for the 7th respondent in E.A.No.179 of 2008/petitioner in C.R.P.No.4423 of 2013 reiterated the same contentions raised in the counter and grounds of appeal in C.M.A.19 of 2010.

12.Heard the learned Senior Counsel for the petitioner in both the Civil Revision Petitions, as well as the learned Senior Counsel for

the first respondent in C.R.P.No.4423/2013 and second respondent in C.R.P.No.891 of 2014 and perused the materials available on record.

13.At the outset, it is pertinent to note that respondents 1 to 6/petitioners in C.R.P.No.891 of 2014 who are the judgment debtors, whose property was sold in public auction and purchased by the petitioner, did not challenge the auction sale and purchase by the petitioner in the Execution Court. They have not filed any application challenging the alleged irregularity in the procedure by which public auction was conducted and the respondents 1 to 6 have not alleged that no notice was issued with regard to the date of auction. On the other hand, they have accepted the auction sale and purchase by the petitioner. It is only the 7th respondent/petitioner in C.R.P.No.4423 of 2014 and respondents 1 to 6/petitioners in C.R.P.No.891 of 2014 who claim to be the tenant under the respondents 1 to 6 are preventing the delivery of the suit property by Court Amin to the petitioner. Before the Executing Court, neither the 7th respondent nor the respondents 1 to 6 let in any oral or documentary evidence to prove that 7th respondent is a tenant under the respondents 1 to 6 in respect of the property purchased by the petitioner in the Court auction. The 7th respondent

filed only a copy of the award. The contentions of the learned Senior counsel for the petitioner in C.R.P.No.4423 of 2013/7th respondent that claim of the petitioner before the Registrar of Chits, Tirupur, is barred by limitation and not maintainable for not issuing mandatory notice under Section 33(1) of the Act, are without merits.

14. From the impugned order of the Executing Court, it is seen that deceased E.P. Shanmugam Chettiar was successful bidder in the auction conducted by the petitioner in the chit proceedings and subsequently, he did not pay the instalments. After expiry of bid period, the petitioner initiated the proceedings before the Registrar of Chits, Tirupur. In view of the same, the contention of the 7th respondent/petitioner in C.R.P.No.4423 of 2013 that claim of the petitioner is contrary to the facts as petitioner has right to initiate proceedings either when subscriber commits default in payment or after expiry of the chit period. If proceedings were initiated, when the subscriber commits default and before expiry of lease, then only the proceedings must be initiated within 3 years from the date of default or date of promissory note. Similarly only when the procedures are initiated before the chit period, a notice under Section 33(1) of the Act is mandatory. The said Section is inserted

to put on notice to inform the subscriber about the amount due and payable by him even before expiry of the period of bid.

15. From the impugned order of the Executing Court, it is seen that the petitioner has initiated the proceedings after expiry of the period of bid and the claim of the petitioner is not barred by limitation. The Executing Court has considered each and every objection of the 7th respondent/petitioner in C.R.P.No.4423/2013 elaborately and Sections 32 and 33(1) of the Act and rejected the same by giving valid reason. Similarly, the learned Appellate Authority also considered all the materials on record in proper perspective and dismissed the application. The reasons given by the Executing Court as well as the learned Appellate Authority are valid. There is no irregularity in the order of the Executing Court, judgment of the Appellate Authority warranting interference by this Court.

16. As far as C.R.P.No.891 of 2014 is concerned, the respondents 1 to 6/judgment debtors have not challenged auction sale or delivery order and have not filed any counter in E.A.No.179 of 2008, filed for removal of obstruction by the decree holder. In view of the above facts, the contention of the decree holder that

judgment debtors have no locus standi to file the Civil Revision Petition and the Civil Revision Petition is not maintainable, has considerable force.

17. For the above reason, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.01.2018

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Speaking Order/Non-Speaking Order
gsa

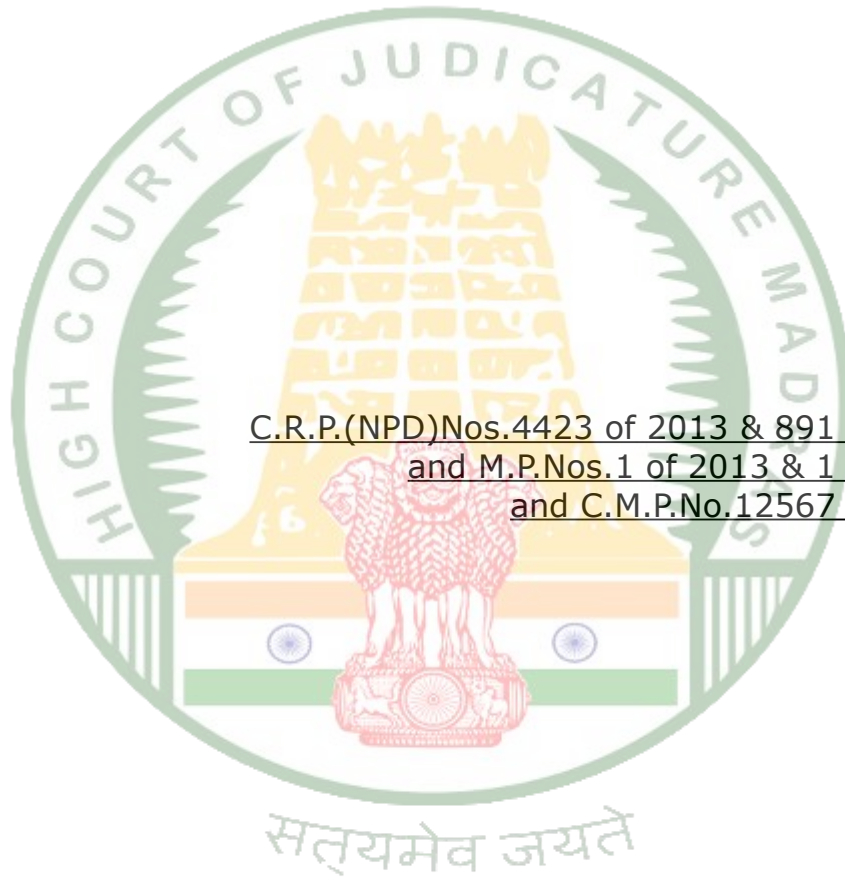
To

The District Munsif,
Pollachi.

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V.M.VELUMANI,J.

gsa



C.R.P.(NPD)Nos.4423 of 2013 & 891 of 2014
and M.P.Nos.1 of 2013 & 1 of 2014
and C.M.P.No.12567 of 2017

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