

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018

Delivered on : 05.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (NPD) .No.489 of 2004

1.R.Rama Prabha
2.R.Mageshkumar
3.Minor R.Kiruthiga
(Rep by her natural guardian mother R.Shanthi) Petitioners

Vs

1.Renganayaki Ammal
2.A.Rangaraj
3.Chinnian (deceased)
4.C.Ganesan
(R4 brought on record as L.R of the deceased R3 vide ... Respondents

(R4 brought on record as the Lrs of the deceased 3rd respondent vide order of Court dated 13.09.2017 by VMVJ made in CMP No.13229 to 13231 of 2017 in C.R.P.No.489 of 2004)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 31.07.2003 made in E.A.No.348 of 1991 in E.A.No.944 of 1990 in E.P.No.286 of 1998 in O.S.No.15 of 1988 on the file of the learned Principal District Munsif, Coimbatore.

For Petitioners: Mr.M.Muruganantham
for M/s.V.Ambika

For Respondents: R1 and R4 - not ready in Notice
R2-No appearance
R3-died (steps taken)
M/s.Mathuvanthi Mathavan
for R4

ORDER

The issue involved in the above revision petition filed under Section 115 of the Code of Civil Procedure is "Whether a Court auction sale in pursuance of a money decree can be set aside on the ground that the sale is not for a joint family necessity"?

2.The facts of the case are narrated in a nutshell hereinbelow to appreciate the issue on hand:

One Rangaraj, the 2nd respondent in the above revision and the father of the revision petitioners, had borrowed a sum of Rs.3,000/- from the 1st respondent herein under the security of a Promissory Note. Since the repayment did not take place, the 1st respondent had filed a suit for recovery of a sum of Rs.3,960/- together with interest against the 2nd respondent. Despite receipt of summons, the 2nd respondent did not enter appearance and an ex parte decree came to be passed on 02.03.1988.

3.The 1st respondent filed E.P.No.286 of 1988 on 30.08.1988 on the file of the learned District Munsif Court, Coimbatore, to execute the decree by bringing the property of the 2nd respondent for sale. Even in the execution proceedings the 2nd Respondent chose to remain exparte and the property was directed to be sold in court auction.

4.The property was sold in Court auction on 30.04.1990 to the deceased 3rd respondent, in the present revision. The sale was confirmed on 09.07.1990.

5.On 01.04.2003, the revision petitioner filed E.A.No.348 of 1991 in E.P.No.286 of 1988 under Sections 47 and 115 of the Code of Civil Procedure to allow the claim of the revision petitioner and declare the Court auction sale held on 30.04.1990 as null and void and not binding on the petition. The basis on which the above petition came to be filed are as follows:

(a)that the properties in question are ancestral properties which came to the 2nd respondent under a family Partition dated 04.03.1985. The properties originally belonged to the 2nd respondent's father Ayyamuthu Achary.

(b)that the debt incurred by the 2nd Respondent was not for a family necessity and that he was leading a wayward life.

(c)that the petitioners have handed over an obstruction petition when the Amin visited the property to take delivery.

(d)that there is collusion between the respondents and the deceased 3rd respondent, who has knocked off the property for a low price.

(e)that the respondents have committed fraud on Court and the sale is not binding on the revision petitioner's 3/4th share.

6.The deceased 3rd respondent, auction purchaser, filed his counter refuting the allegations of the revision petitioners. He had pleaded that it was a clear case of collusion between the revision petitioners and the 2nd respondent, as the revision petitioners and the 2nd respondent continue to live together as one family. It was his further contention that the guardian of the revision petitioners, their mother, was in the complete know of the suit and the execution proceedings and she had deliberately waited till the petition for recovery of possession was ordered and the steps for taking delivery was set in motion. The 3rd respondent had also pleaded that the property is the exclusive property of the 2nd respondent, after the Partition dated 04.03.1985 and the revision petitioners had no share in it.

7.During the enquiry, the revision petitioners had marked Ex.P.1 to Ex.P.15 and the 2nd respondent has marked Ex.R.1. The mother of the revision petitioners had adduced evidence as PW1 and one S.Appaji as PW2. The 2nd respondent has given evidence as RW1.

8.The learned District Munsif, Coimbatore dismissed the claim petition filed by the revision petitioners by his order dated 31.07.2003. It is this order that has been challenged by the revision petitioners by raising the issue that the auction sale has to be set aside as the sale is not for a joint family necessity. Pending the revision, the 3rd respondent had died and his son, the 4th respondent herein, was brought on record.

9.Mr.Muruganantham, who argued on behalf of the Revision petitioners, sought to question the order of the learned District Munsif on the ground that the decree is in respect of a loan, which was not borrowed by the 2nd respondent for family necessity and the consequent Court auction sale was also not for

their benefits. Further, the property being an ancestral one, the sale will not bind the share of the revision petitioners. He also argued that no Court permission was obtained before the properties were sold. He had pressed into service the following Judgments in support of his case.

- (i) (1998) 2 Supreme Court Cases 77
Sunil Kumar and another v. Ram Prakash and others
- (ii) Civil Appeal No.10582 of 2013
Saroj v. Sunder Singh and others
- (iii) 2006 (1) CTC 727
Krishnamoorthy Padayachi (died) and another v.
Vadivel Chettiar (died) and others

10. The 1st and 3rd judgments were relied in support of the proposition that the borrowal by the Kartha would bind the joint family only if it was for joint family necessity and it was for the alienee to prove that there was a legal necessity. The 2nd judgment is relied upon to substantiate the arguments that the permission of the Court is a pre-requisite before the share of minors are sold.

11. Ms. Mathuvanthi, who argued on behalf of the 4th respondent stated that the property in question is not an ancestral property and is the exclusive property of the 2nd respondent by virtue of Ex.P.1-Partition Deed dated 04.03.1985. She would also contend that there is no clarity about the date of death of Ayyamuthu Achary.

12. Upon hearing the arguments of both the parties and perusing the records, it is seen that the dispute arising in the above Civil Revision Petition rests on a very narrow compass viz; the nature of the property in the hands of the 2nd respondent. A perusal of Ex.P.1 would clearly establish that after the Partition on 04.03.1985, the property became the exclusive property of the 2nd respondent. The borrowal has also taken place a month after the Partition. The auction sale which is now called into question has taken place only for execution of the money decree and is not a voluntary sale that is made by the 2nd respondent. The judgments relied upon by the counsel for the revision petitioners relates to properties, which were ancestral properties unlike in the instant case and therefore, the ratio laid down in those cases would not advance the case of the revision petitioners. Since the properties sold in Court auction are the exclusive property of the 2nd respondent under

Ex.P.1 there is no necessity to obtain any Court permission before the sale.

13.For the aforesaid reasons, I find no ground to interfere with the order of the learned Principal District Munsif, Coimbatore in E.A.No.944 of 1990 in E.P.No.286 of 1988. The issue stated in Para 1 supra is answered in the negative as in the instant case the property in question is not an ancestral property.

In the result, the Civil Revision Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mps

To

The Principal District Munsif,
Coimbatore.

Copy to

The Section Officer,
VR Section,
High Court, Madras.(2 Copies)

+1cc to M/S.G.R.Associates, Advocate Sr.43865

+1cc to M/S.Ambika, Advocate Sr.44259(09/10/2018)

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