

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2018

Pronounced on : 22.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(PD).No.4804 of 2017
and
C.M.P.No.22624 of 2017**

Dinesh Ponnan

.. Petitioner

V.

1.A.Prabha Nandam

2.Balaji Ganesh

.. Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 11.10.2017 made in E.A.No.1941 of 2017 in E.A.No.280 of 2017 in E.P.No.1666 of 2017 in O.S.No.650 of 2013 on the file of the learned X Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Prabhakar
For Respondents : Mr.Adinarayana Rao

ORDER

The revision petitioner herein had filed a claim petition under Order 21 Rule 58 of the Civil Procedure Code in E.A.280 of 2017 on 20.04.2017. After enquiry, he had filed an application under Section

151 of the Civil Procedure Code, seeking to reopen his evidence to file his proof affidavit and to mark certain documents, which came to be rejected on 11.10.2017. The said order of rejection is under challenge in the present revision.

2. Heard Mr.K.Prabhakar, learned counsel for the petitioner and Mr.Adinaraya Rao, learned counsel appearing on behalf of the respondents.

3. The learned counsel for the petitioner submitted that the petitioner herein is a bona-fide purchaser of the suit property through E-auction. According to the learned counsel, prior to the purchase, he had conducted due diligence over the title of the suit property and since the encumbrance certificate did not reflect the order of attachment in O.S.No.650 of 2013, he had innocently purchased the suit property. Later, when he had discovered the order of attachment, he had filed the claim petition under Order 21 Rule 58 of C.P.C. The learned counsel for the petitioner submitted that in order to clarify certain queries raised by the trial Court during the enquiry in the application under Order 21 Rule 58, he had sought for reopening his evidence for the purpose of producing certain documents. As such, the trial Court was not correct in rejecting his application. It is the further submission of the learned

counsel for the petitioner that the trial Court had not properly construed the judgment of the Hon'ble Apex Court in **Vadiraj Naggappa Vernekar (Dead) through Lrs., V. Sharad Chandra Prabhakar Gogate** reported in **2009 (4) SCC 410** and since the petitioner herein had filed the present application to reopen the petitioner's side enquiry, the trial court had erred in rejecting his application.

4. On the contrary, the learned counsel for the respondents submitted that there was no illegality in the rejection order which is in challenge in the present revision. According to the learned counsel, the decree in O.S.No.650 of 2013 came to be passed on 26.06.2014. Though the first respondent had filed execution petition in 2015 itself, the present application after completion of the petitioner's enquiry, has been filed only to protract the execution proceedings. The learned counsel further submitted that the trial Court after affording due opportunities to the petitioner during the course of enquiry had closed the petitioner's side arguments and when the matter was posted for the respondent's side arguments to 05.06.2017, the petitioner herein had chosen to file the application. The Court below had properly relied upon **Vadiraj Naggappa Vernekar's case** (Supra) and held that the power of the Court to reopen cannot be invoked to fill up the lacuna in the evidences.

5.I have given careful considerations to the submissions made by the respective counsels.

6.It has been repeatedly held by various Courts that an application to reopen the evidence is a discretionary power vested with the trial Courts, which discretion requires to be sparingly exercised in appropriate cases and not as a general rule and merely on the ground that such reopening will not cause any prejudice to the parties. What requires to be seen in an application of this nature is as to whether the new facts which are sought to be introduced was not available prior to the closing of the enquiry and that such facts have been discovered subsequently and not within the knowledge of the petitioner when the enquiry was conducted.

7.In the instant case, when the petitioner's enquiry was about to be completed, the trial Court had raised a query, touching upon the encumbrance certificate. In consequence to this enquiry, the petitioner now intends to reopen the enquiry for the purpose of bringing certain documents. It is not the case of the petitioner herein that the documents which he intends to mark were not available to him originally during the course of his enquiry. As and when any query or doubts are raised or remarked upon by the trial

Court during the course of enquiry, the applicant cannot chose to reopen the enquiry for the purpose of answering such queries or doubts, which will certainly amount to filling up the lacuna. As such, the trial Court had rightly relied upon the judgment in **Vadiraj Naggappa Vernekar's case** (supra) and had rejected the petitioner's application.

8.It is also seen that in the original claim petition under Order 21 Rule 58, the petitioner herein was given due opportunity and nothing prevented him from producing the required documents at that appropriate time. As such, it can only be held that the discretion exercised by the Court below in rejecting the petitioner's application does not suffer from any infirmity.

9.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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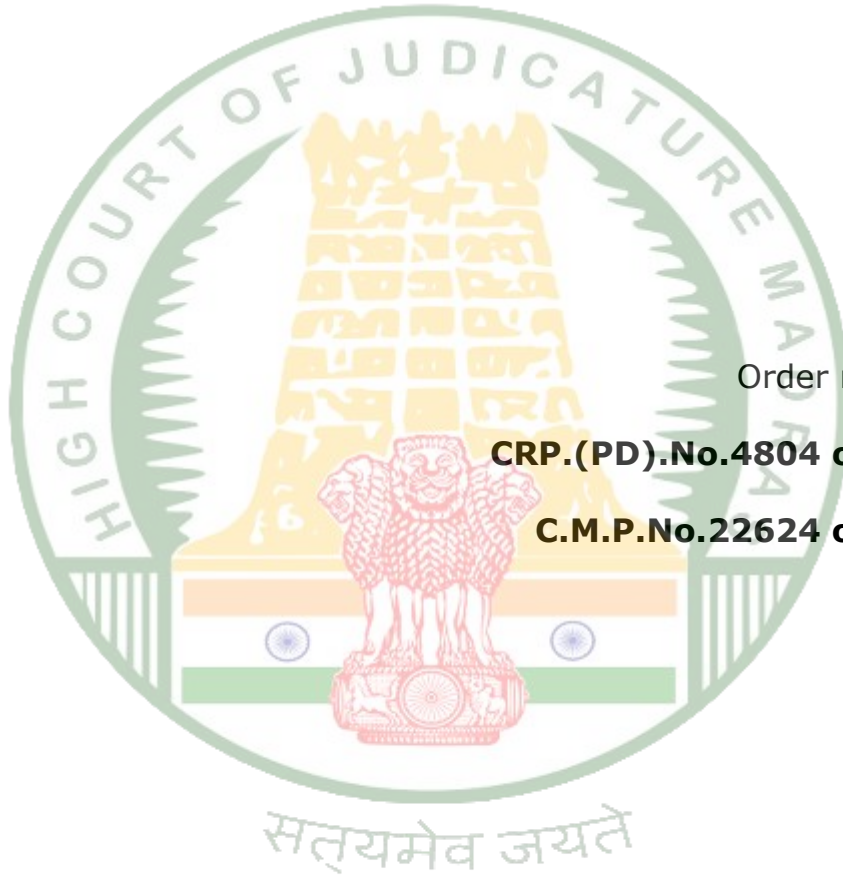
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DP
To

The X Assistant City Civil Court,
Chennai.

M.S.RAMESH, J.

DP



Order made in

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