



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.06.2018
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.1454 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015

Ramasamy

... Petitioner

-Vs-

1.Kaleeswaran
2.John Kennady

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 22.04.2015 passed in E.A.No.328 of 2008 in E.P.No.5 of 2006 in O.S.No.102 of 2002 on the file of the learned Subordinate Judge, Srivilliputtur by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Baalasundharam

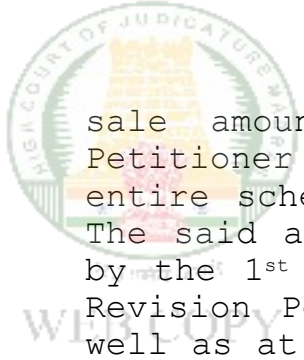
For Respondents : Mr.K.Sudalaiyandi (for R1)

Mr.A.Arumugam (for R2)

ORDER

The Revision Petitioner herein is Judgment debtor E.P.No.5 of 2006 in O.S.No.102 of 2002 on the file of Sub Court, Srivilliputtur. The 1st Respondent herein, the decree holder filed money suit for recovery of sum of Rs.4,98,932/- against the revision petitioner. On 14.07.2003 an ex-parte decree was passed in the above said suit. Thereafter the 1st Respondent has filed the Execution Petition in E.P.No.5 of 2006 to sell the petition mentioned property under court auction sale. In the said Execution Petition initially the Revision Petitioner appeared through counsel and subsequently set ex-parte. Thereafter settlement of proclamation was held on 19.01.2007 and Court auction sale was concluded on 29.10.2007. In the said Court auction, the 2nd Respondent herein has purchased the petition schedule mentioned property for a sum of Rs.7,59,500/-. After deposit of the entire sale amount by the 2nd Respondent/Auction purchaser, the sale was confirmed on 02.01.2008 and Execution Petition was also closed by the Sub Court, Srivilliputtur on the same date.

2. Thereafter the Revision Petitioner filed the application in E.A.No.328 of 2008 in E.P.No.5 of 2006 to declare the entire sale proceedings conducted in E.P.No.5 of 2006 is null and void mainly on the ground that the sale was against the provision under order 21, rule 64 of Civil Procedure Code. He further contented that the market value of the property is more than Rs.20,00,000/- and the



sale amount was very low. Further the case of the Revision Petitioner is the Execution Court is failed to decide whether the entire schedule mentioned property is necessary to bring for sale. The said application filed by the Revision Petitioner was resisted by the 1st Respondent herein by filing counter contending that the Revision Petitioner has appeared even during trial proceedings as well as at the time of execution proceedings and has not questioned the sale proceedings. After reducing the upset price, the property was brought under court auction sale and by following procedures contemplated under the code of civil procedure sale was conducted and on 29.10.2007 the 2nd Respondent has become the successful bidder.

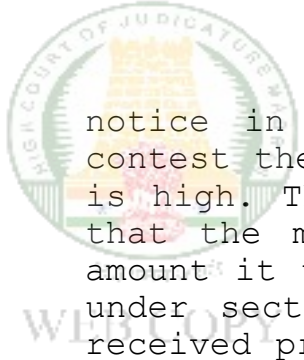
3.The learned Subordinate Judge, Srivilliputtur after considering the rival submissions and evidences adduced on either side dismissed the E.A.No.328 of 2008 by order dated 22.04.2015. By challenging the same the present Civil Revision Petition is filed by the Revision Petitioner.

4.I heard Mr.K.Baalasundharam, learned counsel for the Petitioner, Mr.K.Sudalaiyandi, learned counsel for the 1st respondent and Mr.A.Arumugam, learned counsel for the 2nd respondent and also gone through the entire records.

5.The contention put forth by the learned Counsel for the Revision Petitioner is that the lower court failed to see that the mandatory provision of Order 21 Rule 64 of CPC was not clearly followed while selling the property in the court auction sale. Further the executing court failed to see that the entire land of the revision petitioner need not be sold, since a smaller extent is sufficient to satisfy the decree. He further contented that the executing court failed to appreciate the oral and documentary evidences adduced on the side of the Revision Petitioner which would prove the market value of the property is very high. By supporting is contention the learned counsel has relied upon the decision reported in AIR 1990 SC 119 (Ambati Narasayya Vs M.Subbarao and another) and AIR 1980 MAD 123 (A.P.V.Rajendran Vs S.A.Sundararajan and others).

6.The learned Counsel for the Revision Petitioner would further submit that at the time of granting Interim Stay in this revision petition, the revision petitioner has deposited the decree amount as per the condition imposed by this Hon'ble Court and prayed for allowing the Civil Revision Petition.

7.Per contra, the learned counsel appearing for the 1st Respondent would submit that earlier no one was ready to buy the property for the upset price fixed by the court. Therefore the 1st respondent herein filed an application in E.A.NO.165 of 2007 to reduce the upset price and in which the lower court has reduced the upset price as Rs.7,50,000/-. The learned counsel for the 1st respondent contented that the revision petitioner has received



notice in E.A.No.165 of 2007 through his counsel and failed to contest the same in order to prove the market value of the property is high. Therefore the revision petitioner cannot now come and say that the market value of the property would fetch more than the amount it was sold in the court auction sale by filing application under section 47 of C.P.C. Further, the revision petitioner also received proclamation notice through Court Amine. Hence the learned counsel prays to dismiss this revision petition.

8.The learned counsel appearing for the 2nd Respondent vehemently contended that for setting aside the sale, there is a specific provision in Order 21 Rule 90 of C.P.C. The period of limitation for such an application is 60 days from the date of sale. Having failed to file such an application, the judgment debtor/revision petitioner cannot file an application under section 47 of C.P.C beyond the period of 60 days. Hence, the judgment debtor is legally estopped from filing an application under section 47 of C.P.C long after sale was confirmed. The learned counsel would further draw the attention of this court that the revision petitioner was set ex-parte on 08.01.2007 in E.P.No.5 of 2006 and he has not taken steps to set aside the ex-parte order passed in the execution petition. Hence, the revision petitioner has not locus to file the above application under section 47 of C.P.C. The learned Counsel for 2nd Respondent further contented that merely because the entire property was sold, it does not mean that the sale is vitiated and it has to be set aside. The learned counsel would further submit that the present petition was filed only to drag on the proceedings with a malafide intention to harass the 2nd respondent herein who purchased the property in the year 2008, but till today he is prevented to take possession of the property.

9.By considering the submissions on the either side and perusal of the records it is to be noted that in the E.P. proceedings the settlement of proclamation was held on 19.01.2007 and on the date the lower court has fixed the value of the schedule mentioned property as Rs.8,00,000/- and the date of sale was scheduled on 02.03.2007. It is seen from the records that there was no bid on the said date. Subsequently the 1st respondent/decreed holder has filed an application in E.A.NO.165 of 2007 to reduce the upset price and the lower court has allowed said E.A.No:165 of 2008 and reduced the upset price to the tune of Rs.7,50,000/-. Thereafter the property was sold on 29.10.2007 to the 2nd respondent and Sale Certificate was also issued to the revision petitioner on 02.01.2008 and the Execution Petition was closed on 02.01.2008 after the entire sale amount was deposited by the 2nd respondent. When execution petition itself was closed on 2.1.08, the revision petitioner's application under section 47 CPC is not at all maintainable in law and therefore the dismissal of the same by the trial court is perfectly correct.

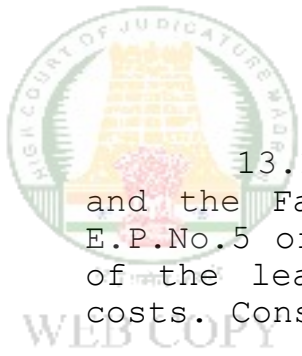
10.At this juncture, it is to be seen from the counter affidavit of the 1st respondent/decreed holder, the revision



petitioner has received the proclamation notice through Court Amine and therefore he had knowledge about the proposed court auction sale to be held on 29.10.2007. The revision petitioner having received notice in the said E.A.No.165 of 2008 through his counsel, has not contested the said application and further, after having knowledge over the sale, the revision petitioner has not objected the same on the ground saying that the market value of the property would fetch more than the upset price fixed up the court. That apart, the revision petitioner has allowed suit to be decreed ex-parte and has not chosen to file application to set aside the ex-parte decree. Further, in the execution petition in E.P.No:5 of 2006 also, he was set ex-parte and he allowed the same to become final. Therefore in the considered opinion of this court, the conduct of the revision petitioner in filing application under section 47 CPC, after closure of E.P, is a clear case of abuse of process of law and court.

11.Now coming to the legal submissions made by the learned counsel for petitioner, this court has considered the Judgment relied on by the counsel for the petitioner reported in AIR 1990 SC 119. In the said Judgment, the Hon'ble Apex Court has set aside the court auction sale, since the Judgment debtor has filed the application for setting aside the sale within 60 days from the date of sale as per the provision Order 21 Rule 90. But in the present case on hand, the revision petitioner has not filed the application to set aside the sale within a period of 60 as per Article 127 of the Limitation Act and he belatedly filed the application on 24.06.2008 and the same cannot be entertained and not maintainable in law. Therefore the Judgment relied on by the revision petitioner is not helpful to him, since the same is not applicable to the facts of the present case on hand. Therefore I have no hesitation to hold that there is no irregularity in conducting the sale as urged by the learned counsel for the revision petitioner. The revision petitioner ought to have filed application within 60 days as per Article 127 of the Limitation Act under Order 21, Rule 90 of CPC that too after depositing the entire sale amount. Therefore the application filed by the revision petitioner under section 47 of C.P.C is not at all maintainable in law. Hence, the finding of the lower court that the revision petitioner did not prove his contention that the property sold in auction was more value than the decree amount is legally sustainable and the same is not warranting interference by this Court.

12.In view of the foregoing discussion, I am of the considered opinion that the learned Subordinate Judge, after considering the above legal aspects has rightly dismissed the application filed by the revision petitioner and I do not find any merits in this civil revision petition. Hence, the impugned order passed by the Execution Court is liable to be confirmed. It is needless to say that the revision petitioner is entitled to get refund of the amount deposited by him as per the direction of this Court at the time of granting interim order, before the lower court without filing any formal application.



13. In the result, this Civil Revision Petition is dismissed and the Fair and Decretal order passed in E.A.No.328 of 2008 in E.P.No.5 of 2006 in O.S.NO.102 of 2002 dated 22.04.2015 on the file of the learned Sub Court, Srivilliputtur is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Srivilliputtur.

+1CC to Mr.K.Baalasundharam, Advocate, SR.No.70487
+1CC to Mr.K.Sudalaiyandi , Advocate, SR.No. 70283
+1CC to Mr.A.Arumugam, Advocate, SR.No.70284

C.R.P.(MD)No.1454 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015
28.06.2018

VSV
ES/RP/SAR 4/11.07.2018/5P/5C