



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.2259 of 2015

and M.P. (MD) No.1 of 2015

1. Mrs.Rosily
2. Mr.Nagamuthu ... Petitioners/Petitioners/Respondents/Defendants

-vs-

1. Pushpa Bai ... 1st Respondent/Petitioner/Petitioner/Plaintiff
2. Davidson ... 2nd Respondent/Petitioner

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the petition and order dated 30.04.2015 made in E.A.No.218 of 2011 in E.P.No.207 of 1994 in O.S.No.853 of 1990 and direct the learned District Munsif Court, Kuzhithurai to number the Interlocutory Application.

For Petitioners : Mr.T.Lajapathi Roy
For R1 : Mr.V.M.Bala Mohan Thampi
For R2 : Mr.K.N.Thampi

O R D E R

The Revision Petitioners are the defendants in the suit in O.S.No.853 of 1990 on the file of the learned District Munsif Court, Kuzhithurai and the suit was filed by the plaintiff for recovery of money, etc. The said suit was decreed in favour of the plaintiff and the properties of the defendants were ordered to be auctioned to realize the amount. Subsequently, the plaintiff had filed E.P.No.207 of 1994 for execution of the order passed by the Trial Court, which stood allowed in favour of the plaintiff. Against the said order, the revision petitioners / defendants sought to file E.A.Nos.123 and 124 of 1996 for setting aside the sale and also to review the order respectively, which were dismissed on the ground that the sale by auction was confirmed. Again, the revision petitioners/defendants has filed an application in E.A.No.218 of 2011, praying to give sufficient time to prefer appeal or revision against the orders passed against them and the said application was dismissed, stating the same is barred by *res judicata*. Challenging the said finding, this revision petition has been filed.



2. It is the case of the revision petitioners / defendants that though the Court below had directed the decree holder to auction only the portion of land required for realization of the E.P.amount, the entire property property along with the dwelling house had been auctoned, as the newly constructed building was not there then and therefore, the auction held itself was vitiated and contrary to the Rules. It is the further case of the petitioners that though the petitioners had remitted the decree amount, while filing the petition in E.A.123 of 1996 for setting aside the sale, the Execution Court did not take into consideration the same and confirmed the sale. It is also submitted that it is a settled proposition that when a petition for setting aside the sale is pending, no confirmation of sale should have been made and therefore, the order of the Trial Court is contrary to the settled law. Contending that the order of the Trial Court is un-sustainable, it is prayed that the said order is liable to be set aside.

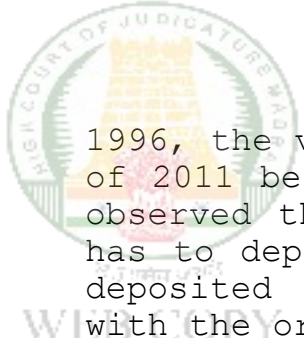
3. Learned counsel for the 1st respondent/plaintiff has strenuously contended that the petitioners have been filing applications one after the other, thereby dragging on the proceedings without allowing it to come to a conclusion. Despite Court's direction to deposit the amount before confirmation of sale, they did not remit any amount and the petitioners, having themselves allowed the sale to attain finality, cannot now make hue and cry against the order.

4. Learned counsel for the 2nd respondent, by producing a copy of the order dated 17.12.2014 passed by this Court in CRP(MD) Nos.947 and 948 of 2011, has contended that the petitioners did not deposit the purchase money, which resulted in confirmation of sale and therefore, there is no error on the part of the Execution Court in refusing to set aside the sale.

5. Heard the learned counsel for the petitioners and the learned counsel for the respective counsel appearing for the respondents. This Court also perused the material documents available on record.

6. A circumspection of the fact would reveal that admittedly, the revision petitioners did not succeed in the suit and were ordered to pay the amount and the failure on the part of the petitioners to deposit the amount resulted in auctioning their properties, which, according to them is not sustainable, as the amount due to be paid is very less, for which, the entire extent of the properties were put to auction. Though the petitioners filed E.A.Nos.123 and 124 of 1996, those applications were dismissed as devoid of merits.

7. It is seen that the suit is of the year 1990 and the petitioners have some how succeeded in dragging on the matter for about 28 years. Against the order passed in E.A.Nos.123 and 124 of



1996, the very same petitioners preferred C.R.P.(MD) Nos.947 and 948 of 2011 before this Court, in which, on 17.12.2014, this Court had observed that as per Order 21 Rule 89 of CPC, the judgment debtor has to deposit the entire sale amount, whereas the petitioners had deposited only meagre amount and therefore, refused to interfere with the order passed by the Trial Court.

8. The petitioners again filed E.A.No.218 of 2011, which is called in question in this petition, seeking to stall the proceedings till the appeal is filed. It is to be noted that what was not achieved on earlier occasions, is attempted to be achieved by filing the present application and the act of the petitioners is highly deprecated. As rightly held by the Court below, in the event of allowing this petition, it will be hit by the principle of res judicata, as for the very same cause of action, it cannot be decided twice.

9. Under such circumstances, this Court is of the view that the order of the Trial Court does not call for any interference by this Court and this petition fails. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To:

1. The District Munsif Court,
Kuzhithurai.

+1 CC To MR.K.N.THAMPI, Advocate SR. NO. 73580

+1 CC To MR.T.LAJAPATHI ROY, Advocate SR. NO. 73443

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