



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P.(MD).No.85 of 2015

K.Santhanam

...Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

A.Anbukarasu

...Respondent/Respondent/
Respondent/Defendant

PRAYER: Petition filed under Article 115 of Cr.P.C. setting aside the order dated 14.11.2014 made in E.A.No.36 of 2014, in E.P.No.77 of 2009, in O.S.No.177 of 2007 on the file of Fast Track Court No.III, Madurai.

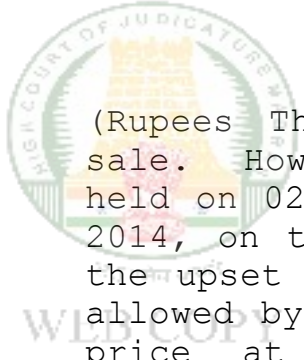
For Petitioner
For Respondent

: Mr.G.Shankar Ganesh
: No Appearance

ORDER

This Civil Revision Petition has been filed against the order dated 14.11.2014, made in E.A.No.36 of 2014 in E.P.No.77 of 2009 in O.S.No.177 of 2007, on the file of the Fast Track Court No.III, Madurai.

2.The plaintiff is the revision petitioner in this Civil Revision petition. The petitioner filed a suit in O.S.No.177 of 2007, on the file of the learned District Judge, Madurai, claiming a sum of Rs.6,20,616/- (Rupees Six Lakhs Twenty Thousand Six Hundred and Sixteen only) with interest at the rate of 24% per annum. On 26.11.2007, the suit was decreed to the effect that the petitioner / plaintiff was entitled to get 9% interest from the date of petition i.e., from 26.11.2007 to 28.04.2009 and 6% interest from 29.04.2009 to 28.06.2009, pursuant to which, the petitioner filed E.P.No.77 of 2009, on the file of the Fast Track Court No.III, Madurai and the property of the respondent was brought on sale. In the Execution proceedings, the respondent filed an application for appointment of an Advocate Commissioner, to note down the physical features and also to measure the suit property and to fix the value with the help of the Engineer and that application was dismissed. Aggrieved over the same, the respondent filed C.R.P.(MD).Nos.618 & 619 of 2013, before this Court, which were disposed of by this Court giving a direction to the Executing Court to fix the upset price at Rs.35,00,000/-



(Rupees Thirty Five Lakhs only) for bringing the property for sale. However, no person is willing to take part in the auction held on 02.06.2014. Therefore, the petitioner filed E.A.No.36 of 2014, on the file of the Fast Track Court No.III, Madurai to fix the upset price as Rs.22,00,000/-. The said petition was partly allowed by the Lower Court and the Lower Court reduced the upset price at Rs.33,00,000/- (Rupees Thirty Three Lakhs only). Aggrieved over the same, the petitioner has come forward with this Civil Revision Petition.

3.On the side of the petitioner, it is stated that the total value of the property is Rs.15,00,000/-(Rupees Fifteen Lakhs only). The petitioner laid a suit in O.S.No.177 of 2007 and the said suit was decreed and in order to execute the decree, he filed E.P.No.77 of 2009. The respondent herein filed C.R.P.(MD).Nos.618 and 619 of 2013, before this Court, which were disposed of, by an order dated 16.04.2013, fixing the upset price at Rs.35,00,000/- (Rupees Thirty Five Lakhs only). However, liberty was given to the petitioner to file an application to reduce such upset price, if there was no bidder for Rs.35,00,000/-. Pursuant to the order passed by this Court, the Trial Court fixed the upset price at Rs.33,00,000/-. Since there was no bidder, on 14.11.2014, the petitioner / plaintiff filed E.A.NO.36 of 2014, before the Fast Track Court No.III, Madurai to reduce the upset price from Rs.35,00,000/- to Rs.18,00,000/-. The said petition was partly allowed and the lower Court reduced the upset price from Rs.35,00,000/- to Rs.33,00,000/-.

4.Adding further, the learned counsel would contend that eight cents of the property were purchased on 12.03.2002 for a consideration of Rs.1,55,500/- (Rupees One Lakh Fifty Five Thousand and Five Hundred only) and the same property was sold at Rs.5,00,000/- (Rupees Five Lakh only) in the year 2012. A perusal of the typed set of papers, more particularly, page No.23 viz., the Government Value, reveals that the value of the property is Rs.900/- per square feet. The suit property is only 4 Cents and therefore, at any stretch of imagination, the value of the suit property cannot be Rs.33,00,000/-.

5.The learned counsel appearing for the petitioner in support of his contention relied upon a judgment of this Court in **(1993) 2 MLJ 169-(T.Duraiswami Vs. Lakshmi and another)**. He also drew the attention of this Court to Paragraph No.10 of the order, in which, it has been held as follows:-

"10.In the instant case before me, there is neither any material to come to a conclusion that there was any material irregularity nor there is any material to show that it had resulted in substantial injury to the judgment-debtor. When none of the elements are



present and when none of the objections taken by the judgment-debtor for assailing the Court auction sale finds acceptance with me, the inevitable result is that this appeal, which has got no merits, will have to be dismissed and shall stand dismissed."

6. I have perused the records carefully.

7. Admittedly, this Court, by an order dated 16.04.2013, in C.R.P. (MD). Nos. 618 & 619 of 2013, gave a direction to the Executing Court to fix the upset price of Rs.35,00,000/- for bringing the property for sale. However, liberty was also given to the petitioner to file a petition to reduce the said upset price, if there was no bidder for Rs.35,00,000/-. Hence, the petitioner filed E.A.No.36 of 2014, before the Fast Track Court No.III, Madurai, for reduction of upset price, in which, the Executing Court has fixed the upset price as Rs.35,00,000/-. However, the property has not yet been auctioned. Therefore, going into the merits of the matter, applying the guide line value of the property at Rs.900/- per square feet to the case on hand, the value of the property in question would come to Rs.17,40,000/- At present, the value might have been increased.

8. However, in the facts and circumstances of the case, this Court deems it fit to reduce the upset price to Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and if the bidders are not ready to purchase the property for a sum of Rs.25,00,000/-, the petitioner is at liberty to file a fresh petition for reducing such price and to that extent, the order dated 14.11.2014, made in E.A.No.36 of 2014, on the file of the Fast Track Court No.III, Madurai, is hereby, set aside.

9. This Civil Revision Petition stands allowed as indicated above. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Judge, Fast Track Court No.III, Madurai.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.G.SHANKAR GANESH, ADVOCATE IN SR No. 83814
TSG

TE/PM/SAR-3 : 27/10/2018 : 3P/5C