



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.04.2018

Pronounced on : 22.06.2018

CORAM

WEB COPY

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.1505 of 2016

M.Thoondikaruppasamy

.. Petitioner

Vs

1.Murugeswari

2.Ramar

.. Respondents

Prayer: Civil Revision is filed under Section 115 of C.P.C., against the Fair and decretal order dated 01.02.2016 made in E.A.No.14 of 2014 in E.P.No.24 of 2008 in O.S.No.1 of 2007, on the file of the learned Sub-Court, Sivakasi.

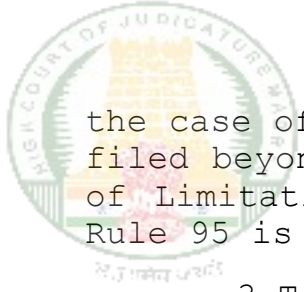
For Petitioner : Mr.K.Viralinathan

For Respondents : M/s.P.Jessi Jeevapriya
for R2
No Appearance (for R1)

ORDER

The instant Civil Revision Petition is filed as against the order passed in the Execution Application No.14 of 2014 in Execution Petition No.24 of 2008 in O.S.No.1 of 2017 dated 01.02.2016, on the file of the Learned Subordinate Judge, Sivakasi.

2.The facts of the case is that the revision petitioner is the 2nd Respondent, in the Execution Application and defendant in the original suit. The said suit was filed for the recovery of the loan amount a sum of Rs.2,50,000/-. The said suit was decreed on 01.08.2007 wherein, the defendant was directed to pay a sum of Rs.2,90,000/- with interest for a sum of Rs.2,50,000/- at the rate of 9% per annum from 02.01.2007. Subsequently, Execution Petition was filed in E.P.No.24 of 2008 to bring the petition property for auction. Accordingly, the property was brought for auction and the Court action was conducted on 04.06.2010 and the 1st Respondent herein took the property on Court auction at a sum of Rs.3,05,000/-. The sale was confirmed on 19.10.2012. Admittedly the possession of the property was not handed over and the sale certificate was issued in February, 2013. However, the Execution Application in E.A.No.14 of 2014 was filed for recovery of possession of the property, but



the case of the revision petitioner is that the said application was filed beyond the period of one year as prescribed under Article 134 of Limitation Act, 1963, so, the application filed under Order 21 Rule 95 is bad in law as the same is barred by limitation.

3.To support his case, the learned counsel for the petitioner has produced the Judgment in the case of Meenakshi Ammal v. Selvaraj and others in CRP(NPD)No.1958 of 2004 in para-13(x)(10) as follows:

"x) 2012 2 LW 839 (S.Sivasubramanian v. N.Chinnasamy and others), in which para 10 as under:-

"10. As laid down in the aforesaid two decisions of the Apex Court, the period of limitation of one year prescribed under Article 134 of the Limitation Act starts running from the date of confirmation of sale and the period of limitation does not start from the date when the sale certificate is issued. The sale becomes absolute on confirmation under Order 21 Rule 95 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order 21, Rule 94 of the Code of Civil Procedure. It is unfortunate that the trial court has not properly considered the objections raised by the judgment debtor basing reliance on Article 134 of the Limitation Act. The lower court has not at all adverted to the date of confirmation of the sale and had the Court done that exercise, the erroneous order could not have been passed and therefore, the order of the court below is liable to be set-aside and accordingly, the same is set aside and the Civil Revision Petition stands allowed. However, though the auction purchaser had not availed the remedy provided under the Code of Civil Procedure, it is always open to him to file a regular suit for possession based on title subject to the period of limitation prescribed therefor.

Therefore, it is open to the auction purchaser / first respondent herein to file an appropriate suit if he is so entitled to in law. No costs. Consequently, the connected MP is closed."

4.According to the Learned Counsel for the Revision Petitioner that the executing Court has not considered the points raised by the revision petitioner, but ordered delivery. Further, the 2nd Respondent stated that already the property was mortgaged for a sum of Rs.50,000/-, hence the said property cannot be brought for auction. So, the application for the recovery of possession is not maintainable and he prays to allow the Civil Revision Petition.

5.Per contra, the learned counsel for the Respondent/3rd Party would submit that the order passed in the application filed under Order 21 Rule 95 of C.P.C. is in accordance with law and it is not barred by limitation as prescribed Under Article 134 of the Limitation Act. So, the order impugned in the Civil Revision



Petitioner is not liable for any interference in the Revision Jurisdiction. So, the learned counsel for the respondent No.2, prays for the dismissal for the Civil Revision Petition.

6.I heard Mr.K.Viralinathan, learned counsel for the petitioner and M/s.P.Jessi Jeevapriya, learned counsel for the 2nd respondent and all the materials available on record are perused. No representation on behalf of the 1st respondent.

7.The short question to be decided in the Civil Revision Petition is that as to whether the Court auction purchaser is entitled to file the application for the recovery of possession of the auctioned property within the period of one year from the date of the confirmation of the sale. For the better understanding Article 134 of the Limitation Act, 1963 is reproduced here under:

"For delivery of possession by purchaser of immovable property at a sale in execution of a decree, limitation is prescribed as one year from the date when the sale becomes absolute".

8.It is very clear that Article 134 of Limitation Act would prescribe the period of limitation is one year but the said period of one year is reckoning from the date when the sale becomes absolute. So, it is not the definition that the application is to be filed within a period one year from the date of the conformation sale. Instead it is define is that the limitation starts from the dates on which the sale become assault.

9.Here, in the instant case, the Court auction sale was conducted on 04.06.2010, the sale was confirmed on 19.10.2012 and the sale certificate was issued in February, 2013. It in an admitted fact that the Court auction proceeding was not challenge before any other Court by the aggrieved party. At the same time a petition in E.A.No.1 of 2007 was filed by the legal heirs of the revision petitioner and contested that they are having rights over the property and sought for the dismissal of the Execution Petition in E.P.No.178 of 2010. Subsequently, against the order passed in execution petition appeal was filed and dismissed and there after the said matter was taken up to this Court. So, admittedly legal proceedings are pending, but no interim order was obtained to stay the proceedings of the Execution Application No.14 of 2014. So, in the considered opinion of this Court the period of one year would not commence from the date on which the sale was conformed since no such word is used in such context in Article 134 of the Limitation Act, 1963, but the words coined in the said provision is that "when sale becomes absolute". In this regard the learned counsel for the 2nd Respondent has relied on the judgment in the case of United Finance Corporation v. M.S.M.Haneefa (Dead) Through Legal Representatives reported in (2017) 3 SCC 123 rendered by the Hon'ble Supreme Court, which is squarely covered the legal point involved in the revision petition.



10. The Hon'ble Supreme Court in the above case held as follows:

"7. Article 134 of the Limitation Act will apply to an application filed under Order 21 Rule 95 CPC by the auction-purchaser for delivery of possession of property sold in execution of a decree. The limitation for filing an application under Order 21 Rule 95 CPC is one year from the date when the sale becomes absolute. Article 134 of the Limitation Act reads as under:-

	"Description of application	Period of limitation	Time from which period begins to run
134.	For delivery of possession by a purchaser at a sale in execution of a decree	One year	When the sale becomes absolute"

8. For better appreciation of the contentions, we may recapitulate the various dates in seriatim as under:

Date of auction sale	... 27.10.2001
Confirmation of sale	... 1.6.2002
Sale certificate	... 17.3.2003
Stay granted by High Court in force	... 17.9.2002 till 9.7.2003
Order 21 Rule 95 CPC application filed by appellant.	... 30.8.2003

9. The High Court relied upon the decision in Pattam Khader Khan case for taking the view that the application filed under Order 21 Rule 95 CPC by the appellant auction-purchaser was barred by limitation. The High Court held that the issuance of a sale certificate is not sine qua non for the maintenance of an application for delivery, since the title of the court auction-purchaser becomes complete on the confirmation of the sale under Order 21 Rule 92 CPC. We may refer to the relevant portion of the judgment in Pattam Khader Khan case, which reads as under: (SCC p. 54, para 11)

"11. Order 21 Rule 95 providing for the procedure for delivery of property in occupation of the judgment-debtor etc., requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Order 21 Rule 94. There is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it



is obligatory on the court though, to issue the certificate. That may, for any reason, get delayed. Whether there be failure to issue the certificate or delay of action on behalf of the court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which have no bearing on the limitation prescribed for the application under Article 134. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of a sale certificate is not "sine qua non" of the application, since both these matters are with the same court." (emphasis supplied)

10. Order 21 Rule 95 CPC deals with delivery of property in occupancy of judgment-debtor. Order 21 Rule 95 CPC reads as under:

"95. Delivery of property in occupancy of judgment-debtor. - Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under Rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same." (emphasis supplied)

11. By careful reading of Order 21 Rule 95 CPC, the language of the provision is indicative that application for delivery of possession of property purchased in the court auction can be filed where "a certificate in respect thereof has been granted under Rule 94 of Order 21. Having regard to the language of Order 21 Rule 95 C.P.C. "a certificate in respect thereof has been granted in Rule 94, the court shall, on the application of the purchaser, order delivery to be made..." we have our own doubts regarding the view taken by this Court in Pattam Khader Khans that "... there is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application" and "... that the issuance of sale certificate is not a sine qua non of the application...". However in the facts and circumstances of the present case, we are not inclined to refer the question to a larger Bench - whether issuance of sale certificate is a sine qua non or not for filing the application under Order 21 Rule 95 CPC and the question is left open.



17. Considering the facts of the present case in the light of the above principles, in our view, the sale could not have become absolute till the proceedings in the revision in CRP No.2829 of 2002 was over and the revision was disposed of. The judgment-debtor, as discussed earlier, had filed two applications EA No.315 of 2001- (i) to set aside the sale alleging that the property was sold for a lower price as a result of which substantial injury was caused to him and (ii) another application in EA No.77 of 2002 - an application for appointing Advocate Commissioner to assess the value of the property. As against the order dismissing EA No.77 of 2002, the judgment-debtor has filed the revision in CRP No.2829 of 2002. So long as the said revision was pending, the court auction-sale was yet to become absolute. For the sake of arguments, assuming that the said revision was allowed, then in that case the court auction-sale would have been set aside on the ground that the property was sold for a lesser price. Therefore, till the revision in CRP No.2829 of 2002 was disposed of in one way or the other, the sale was yet to become absolute. Be it noted that in Article 134 of the Limitation Act, the legislature has consciously adopted the expression "when the sale becomes absolute" and not when the sale was confirmed. As against the order dismissing EA No.77 of 2002 since the revision was preferred by the judgment-debtor and the same came to be disposed of on 9-7-2003 the sale became absolute only on 9-7-2003. The application filed under Order 21 Rule 95 CPC on 30-8-2003 was well within the period of limitation. In our view, the High Court was not right in holding that the application under Order 21 Rule 95 CPC was barred by limitation and the impugned order cannot be sustained."

11. On the other hand reliance is placed by the revision petitioner upon the judgment of this Hon'ble Court passed in C.R.P. (NPD) No.1951 of 2004 dated 18.07.2014. But the ratio laid down by the Hon'ble Supreme Court would definitely prevail over the judgment passed in C.R.P. (NPD) No.1951 of 2004 dated 18.07.2014 by this Court.

12. Therefore, this Court is having no hesitation to dismiss the Civil Revision Petition by holding that the points raised in the grounds is not in consonance with Article 134 of the Limitation Act, 1963 and the judgment of the Hon'ble Supreme Court reported in 2017 (3) SCC 123, hence this Civil Revision Petition is deserved dismissal, accordingly dismissed. No costs.

Sd/-

Assistant Registrar (W)

/True Copy/



To

The Sub Judge, Sivakasi.

+1CC to Mr.N.SUBRAMANIAN, Advocate, SR.No.69662

+1CC to Mr.K.Viralinathan, Advocate, SR.No.69341

C.R.P. (MD) (NPD) No.1505 of 2016
22.06.2018

VSV

ES/SKN/RSK/SAR 1/06.07.2018/7P/4C