



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2018

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(NPD) (MD) No.1761 of 2016

and C.M.P.(MD) Nos.8488 of 2016 and 9652 of 2018

K.Srinivasan ... Revision Petitioner/1st Respondent

-Vs-

1.A.R.Gopalakrishnan ...1st Respondent/Petitioner

2.N.Adhilakshmi ...2nd Respondent/2nd Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 29.03.2016 passed in E.A.No.38 of 2008 in E.P.No.56 of 2008 in O.S.No.206 of 2001 on the file of the Sub Court, Periyakulam, Thei District.

For Petitioner: Mr.T.Srinivasa Raghavan

For Respondents : Mr.P.Thiagarajan

O R D E R

The revision petitioner herein is the plaintiff in O.S.No.206 of 2001 on the file of the Sub Court, Periyakulam. It is a suit for money. The decree was passed as early as on 31.01.2002. To enforce the said decree, the revision petitioner filed E.P.No.89 of 2006. It appears that the property belonging to the judgment debtor was brought to sale. Thereafter, to impeach the validity of the auction sale, the judgment debtor took steps and the same was also allowed. Questioning the same, the decree holder has filed this Civil Revision Petition.

2. This Court is of the view that this revision petition is not maintainable. The revision petition has been filed by the petitioner herein not in his capacity as decree holder, but, in his capacity as legal representative of the auction purchaser.

3. The revision petitioner was only a decree holder. The concern of a decree holder could only be satisfaction of the suit claim and nothing more than that. In this case, the judgment debetor has already deposited the entire decreetal claim. When this Court made it clear that the revision petition will have to be dismissed on the ground of maintainability, the learned counsel submitted that the auction purchaser has since passed away and that she has executed a Will in favour of the revision petitioner bequeathing the property in question in his favour and therefore, he would now step into the shoes of the auction purchaser to contest the case.



4. The revision petitioner filed an additional typed set of papers enclosing the Registered Will executed by the auction purchaser/the second respondent. This Court went through the contents of the said Will. It is stated that the second respondent got married to one Natarajan and that her husband passed away as early as on 22.09.1999 and that the revision petitioner is taking full care of her. In the Will, it is mentioned that even her basic needs are only met by the revision petitioner. Therefore, it is simply inconceivable that the second respondent could have purchased the subject matter property on her own. Obviously, this revision petitioner had purchased the property in question through the second respondent Aathilakshmi.

5. That being so, Order 21 Rule 72 of C.P.C will come to play. If the decree holder is to purchase the subject matter of auction through another person, he must obtain permission from the court concerned. In this case, no such leave has been obtained. Therefore, the order passed by the court below is to be sustained for this reason also. Viewed from any angle, there is no case is made out and there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected C.M.P.(MD) Nos.8488 of 2016 and 9652 of 2018 are closed.

6. The respondent/ judgment debtor has no objection for the revision petitioner to withdraw the amount deposited by the judgment debtor along with accrued interest.

Sd/
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To,
The Sub Judge,
Periyakulam, Theni District.

+1cc to Mr.P.THAGARAJAN, Advocate, SR.No.88090

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KK/RSK/SAR-3/19.11.2018/2P-3C