



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD) No.1821 of 2016
and
CMP(MD)No.8768 of 2016

1.A.Mubarak Nisha
2.H.Habeepnisha

... Petitioners

Vs.

1.U.Shanmugaraj
2.A.Ajmalkhan
Asaiya Beevi (died)
3.A.Aashipkhan
4.C.A.Moideen Mansoor

... Respondents

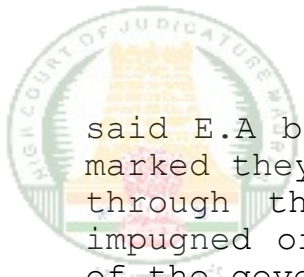
Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 16.03.2016 in E.A No.11 of 2016 in E.A No.36 of 2008 in E.P. No.54 of 2008 on the file of the Sub Court, Theni.

For Petitioner : Mr.H.Lakshmi Shankar
For Respondents : Mr.R.Subramanian for R1
Mr.B.Rajesh Saravanan for R4
R3-Affixed, R4-Insufficient Address.

ORDER

O.S No.214 of 2004 was filed by one Shanmugaraj against one Abdul Kareem before the Sub Court, Periyakulam. It is a suit for payment of money. The suit was decreed on 08.02.2006. The decree has now become final. It was put to execution. The property of the judgment debtor was brought to sale. The fourth defendant herein C.A.Moideen Mansoor was the auction purchaser. Impeaching the said auction sale as vitiated by fraud, the revision petitioners filed E.A No.36 of 2008. The specific case of the revision petitioners is that the suit property measures more than 4 acres and that there are 430 coconut trees standing on the suit property. According to them, the suit property has been sold for a song.

2.When establishing the valuation, the petitioners filed E.A No.11 of 2016 for examining the officials who had issued the valuation certificates. The revision petitioners had to file the



said E.A because when the valuation certificates were sought to be marked they were objected to on the ground that they can only marked through the authors of the document. The court below by the impugned order dismissed the said E.A on the ground that the time of the government officials cannot be wasted.

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3.I am in substantial agreement with the observations made by the court below. But then, this Court cannot lose sight of the fact that the auction purchaser is none other than the brother in law of the first petitioner's brother. He is also based in Kerala. The property that has been purchased by him is located in Periyakulam. There is a serious dispute regarding the valuation. Therefore, in order to establish the allegation of fraud, the revision petitioners herein must be permitted to establish that the property value is several times more than the amount for which it was sold.

4.Therefore, even while sustaining the order impugned in this civil revision petition, this Court permits the revision petitioner herein to ask for appointment of an Advocate Commissioner to submit a valuation report after taking assistance of the concerned persons. They can be registered valuers or even officials from the Horticulture Department. If such application is filed by the revision petitioners within a period of six weeks from the date of receipt of a copy of this order, the court below shall allow the same.

5.The learned counsel appearing for the revision petitioners submits that he shall take a Demand Draft in favour of the decree holder in respect of the decreetal claim amount. The said DD will be handed over to the decree holder in the court hall itself within a period of six weeks. It is made clear that settling of the decree holder's claim by the revision petitioners will not in any way impair the rights of the auction purchaser. Merely because the auction purchaser is a party to this order, the same cannot be put against him. The revision petitioner will not claim any equity in this regard.

6.With this observation and liberty to the revision petitioners, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)



To

1.The Sub Judge, Theni.

2.The Record Keeper, (2 COPIES)

V.R.Section, Madurai Bench of Madras High Court.

+1cc to Mr.H.Lakshmi Shankar, Advocate in SR No.86951

+1cc to Mr.R.Subramanian, Advocate in SR No.87004

+1cc to Mr.B.Rajesh Saravanan, Advocate in SR No.87051

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NM/SKN/SAR IV/13.11.18/3P/7C.