



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P.PD[MD]Nos.517 to 519 of 2016

and

C.M.P.[MD]Nos.2229 to 2231 of 2016

C.Thangappan (Died)

1.T.Edwin

2.T.Alwin @ Alban

3.T.Godwin

4.T.Hency Buela

: Petitioners in all C.R.Ps.

Vs.

1.P.Saul

2.C.Rasalam

: Respondents in all C.R.Ps.

PRAYER in C.R.P.PD[MD]No.517 of 2016: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to call for the records relating to the order dated 12.02.2016 in E.A.No.(Not numbered but marked as C.F. No.847 of 16) of 2016 in E.P.No.77 of 2005 in O.S.No.105 of 2002 on the file of the Court of the Subordinate Judge, Padmanabapuram, Kanyakumari District, set aside the same and allow E.A.No. (Not numbered but marked as C.F.No.847 of 16) of 2016 in E.P.No.77 of 2005 in O.S.No.105 of 2002 on the file of the Court of the Subordinate Judge, Padmanabapuram, Kanyakumari District.

PRAYER in C.R.P.PD[MD]No.518 of 2016: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to call for the records relating to the order dated 12.02.2016 in E.A.No.72 of 2015 in E.P.No.77 of 2005 in O.S.No.105 of 2002 on the file of the Court of the Subordinate Judge, Padmanabapuram, Kanyakumari District, set aside the same.

PRAYER in C.R.P.PD[MD]No.519 of 2016: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to call for the records relating to the order dated 12.02.2016 in E.A.No.(Not numbered but marked as C.F. No.842 of 16) of 2016 in E.P.No.77 of 2005 in O.S.No.105 of 2002 on the file of the Court of the Subordinate Judge, Padmanabapuram, Kanyakumari District, set aside the same and allow E.A.No. (Not numbered but marked as C.F.No.842 of 16) of 2016 in E.P.No.77 of 2005 in O.S.No.105 of 2002 on the file of the Court of the Subordinate Judge, Padmanabapuram, Kanyakumari District.

For Petitioners : Mr.S.Xavier Rajini

For Respondent No.1 : Mr.M.P.Senthil

For Respondent No.2 : Mr.R.Vijayakumar

[In all C.R.Ps.]

**ORDER**

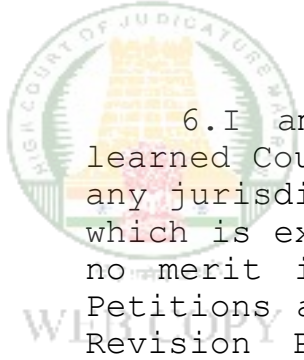
O.S.No.105 of 2002 was filed by one Saul for recovery of money from the father of the revision petitioners herein namely, Thiru.Thangappan. The suit was decreed as early as on 09.11.2004. To execute the said decree, E.P.No.77 of 2005 was filed on 22.09.2005. Thiru.Thangappan was the respondent in the Execution Petition. Since, the decree amount was not paid, the property belonging to Thiru.Thangappan was brought to sale on 12.01.2012. The second respondent herein namely one Rasalam purchased the property in question. To set aside the same, E.A.No.65 of 2012 was filed under Order XXI Rule 90, by the wife of the judgment debtor and other legal representatives on 21.01.2012. The auction purchaser filed his counter in the said E.A. When the E.A. was ripe for enquiry, it was dismissed for non-prosecution on 23.07.2014. The sale was confirmed on the same day.

2. Thereafter, the revision petitioners herein filed the present E.As., questioning the sale and for other reliefs. The Court below did not number the E.As. Challenging the non-numbering of the E.As., the present revision petitions have been filed.

3. Heard the learned Counsel on either side.

4. The learned Counsel for the revision petitioners submitted that in the property in question, the bodies of their parents have been buried and therefore, delivery cannot be permitted. He also contended that the property in question measures 16 cents and that it has been sold for a song. He also contended that they are willing to be put on terms and that they would compensate the auction purchaser. The learned Counsel for the revision petitioners wanted this Court to allow the Civil Revision Petitions.

5. I am unable to agree with the submissions of the learned Counsel for the revision petitioners. As rightly contended by the learned Counsel appearing for the auction purchaser, when an application was allowed to be dismissed for default, the only remedy open to the revision petitioners would be to get the same revived and prosecute the same. A second application on the same cause of action is not maintainable. That apart, he wanted to take note of the conduct of the revision petitioners. After decreeing of the suit, Execution Petition was filed way back in the year 2005. The parents of the revision petitioners died during the pendency of the execution petition. Their bodies have been deliberately buried in the property in question which is not the burial ground. More than anything else, an application for setting aside the auction sale will have to be filed within 60 days. In this case, present E.As., on the very face of it is out of time. Therefore, the Court below rightly declined to number the same.



6.I am in agreement with the said objection raised by the learned Counsel for the auction purchaser. This Court does not have any jurisdiction to direct the Court below to number an application, which is ex-facie barred by limitation. Therefore, this Court finds no merit in these Civil Revision Petitions. The Civil Revision Petitions are dismissed, accordingly. The dismissal of these Civil Revision Petitions will not come in the way of the revision petitioners to work out their rights in the manner known to law. It is open to them to take such steps if so permissible in law to revive E.A.No.65 of 2012 filed by the wife of the judgment debtor along with other revision petitioners. The execution proceedings shall be put on hold for a period of 60 days from the date of receipt of a copy of this order. The Revision Petitioners had deposited a sum of Rs.4,00,000/- [Rupees Four Lakhs only] as per the condition stipulated by this Court while granting an interim order. The said amount shall continue to remain in deposit till then. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Subordinate Judge,
Padmanbapuram,
Kanyakumari District.

+1CC to Mr.R.Vijayakumar, Advocate, SR.No.80559

+1CC to Mr.M.P.Senthil, Advocate, SR.No.80893

ORDER MADE IN
C.R.P.PD[MD]Nos.517 to 519 of 2016
28.08.2018

MR

ES/SV/SAR 1/10.10.2018/3P/4C