



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.09.2018
CORAM

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

WEB COPY

C.R.P. (NPD) (MD) Nos.647 and 648 of 2016
and C.M.P. (MD) Nos.2970 and 2971 of 2016

In Both Petitions:

Velayutha Pandian ...Revision Petitioner/Petitioner/Respondent/
Defendant

-Vs-

1.Vallisundari ... 1st Respondent/1st Respondent/
Petitioner/Plaintiff
2.Selvan
3.Balaganesh ...2nd and 3rd Respondents/2nd and 3rd
Respondents/Petitioners/Auction Purchasers

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C against the fair and decretal order dated 14.10.2015 made in E.A. Nos. 70 and 71 of 2015 in E.P.No.25 of 2010 in O.S.No.780 of 1995 on the file of the District Munsif Court, Tiruchendur at Thoothukudi District.

For Petitioner : Mr.S.R.Anbarasu

For R1 to R3 : No appearance

Amicus Curie : Mr. H.Lakshmi Shankar

COMMON ORDER

The defendant in O.S.No.780 of 1995 on the file of the District Munsif Court, Tiruchendur at Thoothuudi District, is the revision petitioner herein. He suffered a decree. The said decree was put to execution in E.P.No.25 of 2010. The revision petitioner's property was brought to sale on 25.09.2013. The auction purchaser paid 25% of the amount on the same day. Balance amount was also deposited within time. But then, the amount for purchase of stamp papers was not deposited within time. It was deposited belatedly on 10.12.2013. But without taking note of the said delay, the court below issued the sale certificate. Questioning the same, the revision petitioner filed E.A.No.70 of 2015 after about 15 months. The court below, taking note of the fact that the said application has been filed with a long delay, dismissed the same by order dated 14.10.2015. This is challenged in this Civil Revision Petition in C.R.P. (MD) No.648 of 2016.



2. Heard the learned counsel appearing for the revision petitioner. Since there was no appearance on the side of the auction purchasers/the respondents 2 and 3, this Court appointed Mr. Lakshmi Shankar as Amicus Curie to assist the court.

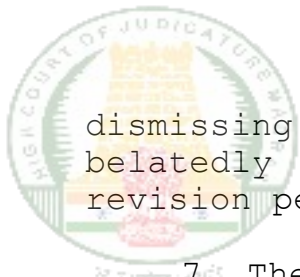
3. The learned counsel on either side brought to my notice the decision rendered in AIR 1974 Madras 278 (In Subbammal Vs. P. Gurusamy Thevar and others).

4. Paragraph No. 5 of the abovesaid judgment is extracted hereunder:

5. In M.M. Shah Vs. Sayed Mahmed 1954-2 Mad L J 55 = (AIR 1954 SC 349), it has been held that the provisions contained in Rules 84, 85 and 86 are mandatory. It is pointed out that the requirements of Rule 85 should be complied with within 15 days, the court has the discretion to forfeit the deposit and there the discretion ends and that the obligation of the court to resell the property is imperative. It is made clear that the non-compliance of the requirements of R. 85 results in the defaulting purchaser forfeiting all claims to the property, because of the provision in Rule 36. That was a case of non-payment of the purchase money. But it must be remembered that under Rule 85, there is no distinction between the purchase money and the general stamps. The rule makes it clear that the full amount of the purchase money as well as general stamps has to be deposited within 15 days from the date of the sale of the property. Therefore, what applies to the purchase money equally applied to the general stamps. In the case referred above, the Supreme court has clearly held that if the requirements of Rule 85 of Order 21 are not complied with within the prescribed time, then the sale is a nullity and the purchaser acquires no right at all. In the face of this decision of the Supreme Court the executing Court is entirely in the wrong in allowing the applications filed by the auction purchasers".

5. It was held therein that the provisions contained in Rules 84 and 85 and 86 of Order 21 C.P.C are mandatory. Under Rule 85, there is no distinction between the purchase money and general stamps. The Rule makes it clear that the full amount of purchase money as well as general stamp has to be deposited within 15 days from the date of sale of the property. What applies to the purchase money equally applied to the general stamps. In this case, the rule has not been complied with. It has been consistently held that if the procedure has not been followed, the auction sale will be a nullity.

6. It has been held that even an application for setting aside the auction sale is not required in view of the sale being a nullity. Therefore, the court below was clearly in error in



dismissing E.A.No.70 of 2015 on the ground that it has been belatedly filed. Therefore, the order impugned in this civil revision petition is set aside.

7. The revision petitioner submitted before this court that he would return the entire auction purchase money to the respondents 2 and 3 herein. This submission is recorded. In other words, 25% money deposited by auction purchaser will not be forfeited.

8. Resultantly, since C.R.P. No.648 of 2016 is allowed C.R.P. (MD) No.647 of 2018 is also allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To,

1.The District Munsif,
Tiruchendur at Thoothukudi District.

2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to Mr.S.R.Anbarasu, Advocate, SR.No.85002

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ES/SKN/RSK/SAR 4/25.10.2018/3P/5C