



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2018

DELIVERED ON : 13.08.2018

CORAM

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

C.R.P. (MD) No.385 of 2015

Shanmugavalli

.. Petitioner

vs

1.Dr.Geetha Radhakrishnan
2.Santha
3.Ravi
4.Tamilarasi
5.Murugeswari
6.Mariammal
7.Dhanalakshmi
8.Gunasekaran

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 29.01.2015 passed in E.A.No.269 of 2014 in E.A.No.399 of 2011 in E.P.No.295 of 2003 in O.S.No.320 of 1986 on the file of the I Additional Sub Court, Madurai.

For Petitioner : Mr.T.C.S.Thillainayagam

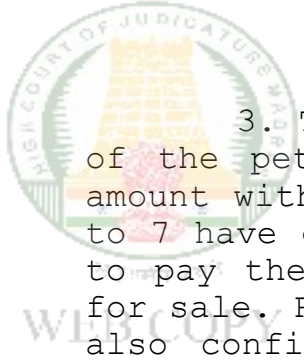
For Respondents : Mr.R.V.Rajkumar (for R8)

Dispensed with-(for R1 to R7)

ORDER

This Civil Revision Petition is directed against the order dated 29.01.2015 passed in E.A.No.269 of 2014 in E.A.No.399 of 2011 in E.P.No.295 of 2003 in O.S.No.320 of 1986 on the file of the I Additional Sub Court, Madurai, dismissing the petition filed by the petitioner under Section 47 of C.P.C.

2. The petitioner is a third party/claimant. The first respondent is the decree-holder; the respondents 2 to 7 are judgment-debtors and respondent No.8 is the auction purchaser.



3. The first respondent has filed E.P.No.295 of 2003 for sale of the petition mentioned property for realisation of the decree amount with subsequent interest thereon. Though the respondents 2 to 7 have entered appearance in the Execution Petition, they failed to pay the decree amount, which resulted in bringing the property for sale. Respondent No.8 was the auction purchaser and the sale was also confirmed. Thereafter, respondent No.8 filed E.A.No.399 of 2011 for delivery of the property.

4. Pending E.A.No.399 of 2011, the petitioner has filed E.A.No.269 of 2014 obstructing the delivery by alleging that she had purchased the petition mentioned property on 13.12.1999 during the pendency of final decree proceedings and that she had right over the auctioned property and therefore, delivery should not be effected in favour of respondent No.8.

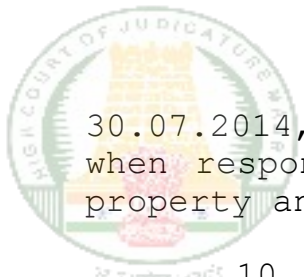
5. Resisting E.A.No.269 of 2014, respondent No.8, who is the contesting party, has filed counter stating that he is the successful bidder in the Court auction in respect of the petition mentioned property and sale certificate was also issued in favour of him on 9.11.2009. It is stated that respondent No.8 filed C.R.P. (MD) No.15771 of 2013 before this Court for speedy disposal of E.A.No.399 of 2011 and the said C.R.P. was disposed of on 12.11.2013. According to respondent No.8, the respondents 2 to 7 were well aware of the filing of the C.R.P. by respondent No.8. The petitioner has no right in the petition mentioned property. It is stated that the petitioner and the respondents 2 to 7 have colluded and filed the present petition. The motive of the petitioner and the respondents 2 and 3 was to make hindrances to respondent No.8 from taking delivery of the property and hence, prayed for dismissal of E.A.No.269 of 2014.

6. Before the Executing Court, the petitioner has marked Exs.P1 to P10. No oral evidence was adduced on the side of the petitioner. No oral and documentary evidence was adduced on the side of the contesting respondent No.8.

7. Upon consideration of the rival submissions, the Executing Court dismissed E.A.No.269 of 2014. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

8. I heard Mr.T.C.S.Thillainayagam, learned counsel for the petitioner and Mr.R.V.Raj Kumar, learned counsel for the contesting respondent No.8 and also perused the materials available on record.

9. The learned counsel for the petitioner submitted that the petitioner had purchased the petition mentioned property on 13.12.1999 from the power agent of respondents 2 to 7 for valid consideration and from the date of purchase, the petitioner was in possession and enjoyment of the property and had also constructed pucca building. The learned counsel would submit that only on



30.07.2014, the petitioner came to know about the auction conducted when respondent No.8 came to the property to take delivery of the property and immediately filed petition under Section 47 of C.P.C.

10. The learned counsel for the petitioner further submitted that in the encumbrance certificate obtained by her, it has been stated that the petition mentioned property belongs to the respondents 2 to 7 and nothing more. According to the learned counsel prior to the auction, the petitioner has purchased the property and therefore, the auction took place would not bind the petitioner. He would submit that the first respondent and defendants 2 to 7 have no right in the petition mentioned property.

11. Per contra, the learned counsel appearing for respondent No.8 submitted that he is the bonafide purchaser under Court auction sale and he had also deposited the full amount into Court. According to the learned counsel, with the collusion of the respondents 2 to 7, the petitioner has filed the claim petition. The learned counsel submitted that since the petitioner purchased the property after passing the preliminary decree, she is also bound by the decree. He would submit that only after analysing the materials produced before it, the Executing Court has rightly dismissed E.A.No.269 of 2014 and there is no need to interfere with the same. In support of his submissions, the learned counsel relied upon the decisions in *Vijayalakshmi Leather Industries (P) Ltd. Chennai v. .Narayanan and others*, reported in 2003-1-L.W. 772; *S.Rajan v. A.Suriyanarayanan and others*, reported in 2008-1-L.W. 1065 and *Jagadeesan and another v. N.Subramani*, reported in 2011-2-L.W. 205.

12. The point that arises for consideration is whether the Executing Court was right in dismissing E.A.No.269 of 2014.

13. The first respondent has filed the suit being O.S.No.320 of 1986 against one Ramadoss for recovery of money based upon the registered mortgage deed dated 26.05.1983 executed by the said Ramadoss. Thereafter, the first respondent filed I.A.No.701 of 1989 for passing final decree. Pending I.A.No.701 of 1989, the defendant Ramadoss died and his legal heirs were brought on record and they were arrayed as defendants 2 to 7 in the suit proceedings. By an order dated 24.04.2003, final decree was passed.

14. Since the respondents 2 to 7 have failed to repay the decree amount, the first respondent filed E.P.No.295 of 2005 and the respondents 2 to 7 have contested the Execution Petition and finally ordered Settlement of Proclamation and Test the petition mentioned property for fixing the value. Pursuant to the order of the Executing Court, the property was tested and upset price was also fixed by the Court. Thereafter also the respondents 2 to 7 have failed to pay the decree amount and the Executing Court ordered sale of the petition mentioned property and the property was brought for Court auction sale on 20.08.2009. Respondent No.8 was the



successful bidder in the Court auction sale on 20.08.2009. He had also paid the one-fourth amount on the same day and the remaining three-fourth was to be deposited within fourteen days from the date of sale. Subsequently, within the time stipulated, respondent No.8 deposited the entire amount, sale was confirmed and sale certificate was also issued in favour of respondent No.8. Based on the sale certificate issued, respondent No.8 filed E.A.399 of 2011 to order delivery of the property.

15. The grievance of the petitioner is that she was a bonafide purchaser under consideration and she has no knowledge about the suit pending between the first respondent and the respondents 2 to 7. It is also averred that at the time of purchase, there was no encumbrance and only after knowing the fact that the petition mentioned property was in possession of the petitioner, respondent No.8 had took the property in the auction. Therefore, there is no bonafide in the Court auction sale and filing of E.A.No.399 of 2011 for delivery of the property.

16. As rightly held by the Executing Court, though the petitioner had produced Exs.P3 to P9 to show that she was in possession of the petition mentioned property, her purchase was after the filing of the suit and after passing of preliminary decree in the suit and thus, her purchase is hit by the doctrine of lis pendens, as the respondents 2 to 7 have no right to alienate the mortgaged property to respondent No.8 through their power agent Rakkammal.

17. In *Vijayalakshmi Leather Industries (P) Ltd. v. K.Narayanan and others*, supra, the Hon'ble Division Bench of this Court held as under:

"7. It is clear statutory bar on the parties to the proceedings from transferring any property which is the subject of the litigation. In view of such statutory bar, any transfer made by any of the parties to the proceeding pendente lite is non-est in the eye of law because the transferee will be entitled for the right of his transferor alone and nothing more. The restriction imposed also includes that the transfer should not be made in such a manner to affect the right of other party. From the words 'under the authority of the court' it is needless to explain that the party who wants to transfer the property pendente lite must get the prior permission of the court."

The Division Bench further held:

"10. Coming to Rule 102 of Order 21 C.P.C., this Rule envisages that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree passed."



18. From the above, it is clear that the transferee from the party to the proceeding or the judgment debtor cannot have any valid independent title than that of the judgment debtor. Therefore, the transfer made by the parties to the proceeding pendente lite is subject to the result of the litigation and there is no absolute transfer of right or title in favour of the transferee.

19. Therefore, the argument of the petitioner that she had no knowledge about the suit pending between the first respondent and the respondents 2 to 7, cannot be accepted for the reason that since the suit is one for mortgage, any purchase made pending suit, is hit by the doctrine of lis pendens.

20. In *S.Rajan v. A.Suriyanarayanan and others*, supra, the learned Single Judge of this Court held:

"14. Suffice to observe that, on the strength of the pleadings made in the execution application (unnumbered), the objection made by the appellant is not maintainable; that consideration of the objection, in the light of the admission that the appellant purchased the property from the judgment debtor, will be an exercise in futility; that by the rejection of the execution application without even numbering the Courts below have committed no error; that there is no scope for any interference with the judgment of the lower appellate Court confirming the order of the trial Court and that the same is liable to be confirmed with the result that the appeal shall fail."

21. In *Jagadeesan and another v. N.Subramani*, supra, the Single Judge of this Court held as under:

"21. Nevertheless, the Hon'ble Supreme Court has also held that if the resistance was made by the transferee pendente lite of the judgment-debtor, the scope of adjudication would be shrunken to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point, the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act. Similar principle was reiterated in the judgment reported in (2008) 7 SCC 144 (supra) and I also had occasion to deal with such claim in C.M.S.A.No.11 of 2010 and relied upon the judgment reported in (2008) 7 SCC 144 (supra) and I also held that a transferee pendente lite cannot obstruct the execution of the decree and he is bound by the decree passed in respect of the judgment-debtor."



22. Though the other judgments relied upon by the learned counsel for the appellants holds that the second appellant being the third party is entitled to raise obstruction to the execution of the decree, having regard to the judgments referred to supra and the fact that the second appellant being a transferee pendente lite is bound by the decree passed and Order 21, Rule 102 of C.P.C., provides a specific bar for such a person, to cause obstruction to the execution of the decree, when the first appellant being the judgment-debtor is bound by the said decree. Hence, the Court below has rightly allowed the appeal and directed the obstruction to be removed. ..."

22. In the case on hand, as rightly held by the Executing Court since the first respondent got preliminary decree on 07.08.1989 in respect of the petition mentioned property, he has preference to initiate legal action on the property and the purchase by the petitioner cannot be termed as valid one. In the final decree proceedings, the respondents 2 to 7 have not stated anything about the sale made by them in favour of the petitioner and they simply remained exparte despite service of notice.

23. It is pertinent to note that only after due publication, the petition mentioned property was brought for sale and respondent No.8 took auction for Rs.4,81,000/- and the sale was confirmed and also sale certificate dated 09.11.2009 was issued in favour of respondent No.8 by the Executing Court. Pursuant to the confirmation of sale and also based upon the sale certificate issued, respondent No.8 has filed E.A.No.399 of 2011 for delivery of the property. It is also pertinent to note that there was no irregularity in the Court auction sale and nothing on record to show that the Court auction sale was conducted by overlooking and/or by deviating the law.

24. On a perusal of the records, this Court finds that when Court Amin went to the petition mentioned property for effecting delivery of the property in favour of respondent No.8, the petitioner and her supporters have objected delivery possession and the Amin returned the delivery warrant with an endorsement seeking police protection.

25. It is apposite to mention that earlier respondent No.8 has filed C.R.P.(MD)No.15771 of 2013 before this Court for speedy disposal of E.A.No.399 of 2011. By an order dated 12.11.2013, this Court directed the Executing Court to dispose of E.A.No.399 of 2011 within a period of three months.

26. According to respondent No.8, the petitioner was aware of the filing of C.R.P.(MD) No.15771 of 2013 and the orders passed thereon. Only to drag on the delivery proceedings and with the collusion of the respondents 2 to 7, the petitioner had filed claim



petition under Section 47 of C.P.C. in E.A.No.269 of 2014. The aforesaid submission of respondent No.8 is acceptable. If really, the petitioner has any legal right, she would have initiated proceedings well before since the legal proceedings of the first respondent was pending since 1986.

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27. In my considered view, the petitioner has no legal right and locus standi to file the claim petition in E.A.No.269 of 2014. Though, the petitioner had purchased the petition mentioned property after the filing of the suit and after passing of the preliminary decree, she is bound by the decree and her purchase is hit by the doctrine of lis pendens. Based on the sale deed dated 13.12.1999, the petitioner cannot claim any right over the petition mentioned property, as the vendors of the petitioner had no saleable right on 13.12.1999.

28. At the cost of repetition, it is reiterated that on the date of sale i.e., on 13.12.1999 in favour of the petitioner, the mortgage decree was in existence and therefore, the petitioner and the respondents 2 to 7 were bound by the preliminary decree dated 07.08.1989. Moreover, as stated supra, there was no irregularity in Court auction sale effected in favour of respondent No.8 and since respondent No.8 is a bonafide purchaser in the Court auction sale and also the sale was confirmed in favour of respondent No.8, there is no bonafide in the claim petition filed by the petitioner. The Executing was right in rejecting E.A.No.269 of 2014 filed by the petitioner as there was no bonafide in it and also the sale was hit by the doctrine of lis pendens. No valid grounds have been made out to interfere with the order of the Executing Court and the Civil Revision Petition is liable to be dismissed.

29. In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in E.A.No.269 of 2014 in E.A.No.399 of 2011 in E.P.No.295 of 2003 in O.S.No.320 of 1986 on the file of the learned I Additional Sub Court, Madurai;

(b) the Executing Court namely, the learned I Additional Sub Court, Madurai is directed to dispose the E.A.No.399 of 2011 filed by the 8th respondent within a period of two weeks from the date of receipt of a copy of this order.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar (CS-I)

To
The I Additional Sub Judge, Madurai.



Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.T.C.S.Thillainayagam, Advocate, SR.No. 78456

C.R.P. (MD) No.385 of 2015
13.08.2018

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