

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.10.2018
Pronounced on : 21.01.2019

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P. (NPD) Nos.493 and 494 of 2006 and
C.R.P. (NPD) Nos.38 and 39 of 2005
and

C.M.P.Nos.1898, 1899 of 2006 and 3613 of 2006

T.R.A.Balasundaram ... Petitioner in both petitions

Vs.

1.A.Senthamilarasu @ Senthilarasu

... First Respondent in CRP 493/06/
7th Respondent in CRP 494/06

2.M/s Vaiyapuri Mudaliar sons

a firm rep. by its partner A.V.Shanmugam.

V.S.V.Agencies, B.B.Road,

R.S.Puram, Coimbatore.

...2nd Respondent in CRP No.493/06/1st
Respondent in CRP 494 of 2001

3.A.V.Manicka Mudaliar

...3rd Respondent in CRP 493/06/ 2nd
Respondent in CRP 494/06

4.A.V.Krishnaswamy

...4th Respondent in CRP 493/06/3rd
Respondent in CRP 494/06

5.R.Balasubramanian @ Vasu

...5th Respondent in CRP 493/06/4th
Respondent in CRP 494/06

6.A.V.Shanmugam

...6th Respondent in CRP 493/06/5th
Respondent in CRP 494/06

7.A.T.Sambasivam

... 7th Respondent in 493/06/ 6th
Respondent in CRP 494 /06

Prayer: This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 against the fair and decreetal order dated 03.11.2004 made in E.A.Nos.502 and 503 of 2004 in E.P.No.5 of 1996 in O.S.No.86 of 1982 on the file of I Additional Subordinate Judge at Erode.

For Petitioner : Mr.S.Saravana Kumar
for Mr.M.Sudhakar in all CRPs

For Respondents: Mr.P.Saravana Sowmiyan
for R2 & R6 in CRP.No.493/2006
for R1 & R5 in CRP.No.494/2006
for R4 & R5 in CRP.Nos.38&39/05

: No Appearance for R1
in CRP.No.493/2006

: No Appearance for R2
in CRP.No.494/2006

: NA for R1 & R6
in CRP.Nos.38 & 39 of 2005

: Not ready in notice for
R2,R3 & R7 in CRP.Nos.38,39/05
R3 to R5 & R7 in CRP.No.493/06
R3,R4,R6 & R7 in CRP.No.494/06

C O M M O N O R D E R

These Civil Revision Petitions are filed against the fair and decretal order dated 03.1.2004 made in E.A.Nos.502 and 503 of 2004 in E.P.No.5 of 1996 in O.S.No.86 of 1982 on the file of I Additional Subordinate Judge at Erode.

2.The revision petitioners are aggrieved by the order passed in the petitions filed under Rules 163 and 165 of CPC and Section 151 of the CPC. The facts in brief are as follows:

(a) Respondents 1 to 6 herein are the decree holders in the suit in O.S.No.86/82. The suit in O.S.No.86 of 1982 had been filed by respondents 1 to 6 against the revision petitioner, who is the third defendant in the earlier suit and others for recovery of money. The suit was dismissed as against which an appeal was preferred in A.S.No.210 of 1985 on the file of this Court and the said appeal was allowed by the judgment and decree dated 06.04.1995, wherein the defendants were directed to pay sum of Rs.2,85,610.14p., together with an interest @ 15% per annum on the above said amount from the date of suit till date payment. The period between 12.04.1982 to 31.08.1984 was excluded.

(b) The decree holders had filed E.P.No.5 of 1996 for attaching the immovable properties belonging to the defendants 3 to 5. The property in respect of the above revision petitioner is the property belonging to the fourth defendant A.Senthamilarasu @ Senthilarasu. It is seen that the properties had also been sold in Court auction on 12.04.2001 and the auction purchasers had deposited total sum of Rs.20,80,311/- to the credit of the Court deposit. It is also seen that the sale amount was transferred to the Indian Overseas Bank, District Court Extension Counter, Erode and deposited therein. Under the said decree, the decree holders were entitled to a sum of Rs.9,97,215.50p. together with interest which works out to a sum of Rs.12,48,024/-. The decree holder therefore filed an application in E.A.No. 502 of 2004 for issuing a cheque in Rs.12,48,024/- in favour of the learned counsel appearing on behalf of the decree holder. The 7th respondent herein, who was the fourth Judgment Debtor(JD) and to whom, the property belonged, was made as a respondent. The said petition was ordered on 03.11.2004.

(c) Similarly, a petition in E.A.No.503 of 2004 was taken out by the 7th respondent in CRP.NPD.No.494/2006 for issue of Cheque with reference to the remaining amount in his favour and this petition was also allowed on 03.11.2004. An application was taken out by the 3rd Judgment Debtor in both these applications to implead himself as a party respondent on the ground that there was a collusion between the decree holders and the 4th Judgment Debtor and therefore in order to protect their interests they have to be impleaded. These applications were dismissed after contest. The 4th defendant/3rd Judgment Debtor, has challenged the orders in E.A.Nos.502 & 503/2004 by filing the above CRP.Nos. 493 and 494 of 2006 respectively.

3.The only ground of challenge against the order in E.A.No.502 of 2004 is the correctness of the calculation adopted by the Court below. Since, even as per the calculation Memo filed, the interest that is due of Rs.2,85,610.14p. at the rate 15% per annum from 12.10.1998 to 12.02.2001 is only a sum of Rs.1,70,102/- and not Rs.2,35,625.36p. as shown in the Calculation Memo. As regards the challenge to the order in E.A.No.503 of 2003, it is the contention of the revision petitioner that there is a dispute between the 7th respondent/4th Judgment Debtor(JD), who is the first respondent in CRP No.494 of 2006 regarding the ownership of the property in the suit O.S.No.36 of 2004.

4.Heard Mr.Sharvanakumar, learned counsel for the petitioner, who would reiterate the grounds that has been raised

in the Civil Revision Petition in his arguments. Heard Mr.P.Saravana Sowmiyan for the respondents.

5.As regards the challenge to the order in E.A.No. 502 of 2004, it is evident from the Calculation Memo that in stead of typing out the date as 12.10.1995 in the second column, the date has been wrongly typed as 12.10.1998, and if interest is calculated from that date, the sum of Rs.2,35,628.36p. is correct. Therefore, there is no error in the order passed in E.A.No.502 of 2006.

6.As regards the order in E.A.No.503 of 2003, it is seen that the property, which was brought to auction, is the property that belonged to the 7th respondent/4th judgment debtor and therefore, he is rightly entitled to the balance amount. Therefore, the order in this petition is also correct and there is no infirmity in the order passed by the learned I Additional Subordinate Judge, Erode.

7.In the result the Civil Revision Petitions are dismissed and the orders dated 03.11.2004 passed in E.A.Nos.502 and 503 of 2004 in E.P.No. 5 of 1996 in O.S.No.86 of 1982 by the file of I Additional Subordinate Judge at Erode, stands confirmed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The I Additional Subordinate Judge,
Erode.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Saravana Sowmiyan, Advocate Sr.4512

C.R.P. (NPD) Nos.493 and 494 of 2006 and
C.R.P. (NPD) Nos.38 and 39 of 2005

ssv[co]
srg 20/03/2019