

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE. N.SATHISH KUMAR

**CRP NPD No.2722 of 2011 and
M.P.No.1 of 2011 and
M.P.No.11097 of 2016**

1. M.Thirunavukkarasu
2. M.Nandhagopal
3. M.Indirani ... Revision Petitioners

Vs.

1. Thilagavathy
2. Gangadaran
Murugesan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 15.02.2010 passed in E.A.No.17/2009 in E.A.No.146/2004 in E.P.No.428/1995 in O.S.No.178/1985 by the District Munsif at Arakkonam, Vellore District.

For Revision Petitioners : Mr.P.A.Chitramani

For 2nd respondent : Mr.N.Rajavadivelu

For 3rd respondent : Mr.Gopalakrishnan

ORDER

This revision petition has been filed against the orders passed by the trial court in dismissing the petition filed under Section 47 of the Code of Civil Procedure to set aside the order of auction sale, in respect of the 3/4 share of the revision petitioners in the property, purchased by the 2nd respondent in the execution petition.

2. The first respondent in E.A.No.17/2009 in E.A.No.146 of 2004 in E.P.No.428 of 1995 had obtained a decree in O.S.No.178 of 1985 against her husband, the 3rd respondent for maintenance. To enforce the said decree, she filed an execution petition. The property of the 3rd respondent was brought in auction and the 2nd respondent namely one Kangadaran was a successful bidder and sale was confirmed by the court and he purchased the property. At this stage, the revision petitioners have filed an application under Section 47 of the Code of Civil Procedure contending that the property which was sold in court auction to the 2nd respondent was originally purchased by their father from and out of the joint family nucleus. It is their contention that their father, sold out the ancestral property situated at Bathravathi in Karnataka State and from the sale proceeds, the suit property has been purchased by him. According to the

petitioners, though the property is stand in the name of their father, it was purchased by him from and out of the joint family nucleus and hence, they sought to declare that the auction sale is not binding them in respect of their 3/4 share in the property purchased by the 2nd respondent.

3. The 2nd respondent filed his counter disputing the allegations of the petitioners.

4. Before trial court, on the side of the petitioners, the first petitioner was examined as PW1 and marked Ex.P1. On the side of the respondents, the 1st and 2nd respondents were examined as RW1 and RW2 and marked Ex.R1 and Ex.R2. The trial court after taking note of the fact that the third respondent was working in a Steel Plant at Arakkonam at the relevant point of time, which was not disputed by both parties, dismissed the application holding that no evidence was adduced to prove the fact that suit property was purchased from and out of the sale proceeds of the ancestral property.

5. Heard the learned counsel appearing for the revision petitioners as well as the respondents.

6. Though the revision petitioners contended that the property which was sold through court auction was purchased by their father, from and out of the joint family nucleus, there is no evidence whatsoever available on record to presume that their father had ancestral property, except the allegation in the affidavit. No iota of evidence on record even to show the family had some other property, which profits had been used for purchase of the suit property. In the absence of any evidence, it cannot be presumed that the property is joint family property. Therefore, this court is of the view that this application has been filed by the sons of the third defendant to defeat the right of the auction purchaser. Hence I do not find any illegality or infirmity in the orders passed by the trial court and the same does not warrant any interference by this court.

7. In the result,

(i) this civil revision petition is dismissed. No costs. The connected civil miscellaneous petitions are closed.

(ii) The order passed by the trial court is confirmed.

WEB COPY

01.03.2019

Index:Yes/No
Internet:Yes/No
speaking/non speaking order
mst

To

The District Munsif, Arakkonam, Vellore District.



WEB COPY

N.SATHISH KUMAR, J.,

mst



**CRP NPD No.2772 of 2011
M.P.No.1 of 2011 and
M.P.No.11097 of 2016**

WEB COPY

01.03.2019