

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP.(NPD).No.4143 of 2012andM.P.No.1 of 2012

D.Dhanasekaran,
S/o.Duraisamy,
Rice Mill Garden,
Oricheri Village and Post,
Bhavani Taluk,
Erode District.

... Petitioner

.Vs.

1.R.Uthirakumar,
S/o.Rangasamy
Oricheri Village,
Bhavani Taluk,
Erode District.

2.O.D.Pattaiyan,
S/o.Devaraya Gounder,
Osapadi, Vempathi Village,
Bhavani Taluk,
Erode District.

3.M.Duraisamy,
S/o.Muthusamy,
Rice Mill Garden,
Oricheri Village and Post,
Bhavani Taluk,
Erode District.

... Respondents

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PRAYER: Civil Revision petition filed under Article 227 of Constitution of India to set aside fair and decretal order dated 26.07.2012 made in C.F.R.No.2584 of 2012 in EP.No.32 of 2006 in O.S.No.218 of 2004 on the file of the Principal District Munsiff Court, Bhavani.

For Petitioner : Mr.V.Anandha Moorthy

For Respondents : Mr.T.Muruga Manikam
Senior counsel
for M/s.Zeenath begum (for R1)

Mr.S.Kaithamalai Kumaran (for R2)

ORDER

The revision is filed as against the order of the executing court, rejecting the application filed under Order 21 Rule 90.

2.The brief facts of the case reads as follows:

The Decree Holder obtained a decree in O.S.No.218 of 2004 for a sum of Rs.53,190/- against the Judgment Debtor and thereafter he filed E.P.No.32 of 2006 for recovery of sum of Rs.67,571.25/-. In the Execution Petition though two properties were mentioned in the schedule, 2nd item of the EP schedule was brought into auction and sold for sale consideration of Rs.1,75,000/-. According to the revision petitioner, the 2nd item which is subject matter of the auction sale is an ancestral property and extent covered under 2nd item is only 48 cents, out of which, the Judgment Debtor had only 16 cents towards his share. This aspect was crystallised and was decided in the earlier partition suit in O.S.No.74/2003. Hence, the contention of the revision petitioner that since this is an ancestral property, the sale should be set aside. Accordingly, application under order 21 Rule 90 in CFR.No.2584 of 2012 was filed and the trial Court rejected the application on the ground that there is no pleadings with regard to material irregularity or fraud in conducting the sale, against which the present CRP is filed.

3.The learned counsel for the revision petitioner contended that admittedly the property is an ancestral property in which he has a share. His right has already been crystallised in the earlier suit. It is his further contention that even though EP has been filed for recovery of a sum of

Rs.67,571.25/-, the property has been sold for a sum of Rs.1,75,000/-. That apart, the trial Court without giving an opportunity to the party and without even numbering the petition, rejected the petition. Hence he prayed for revision.

4.The learned senior counsel for the 1st respondent contended that sale can be set aside only on two grounds under order 21 Rule 90 of CPC viz., material irregularity or fraud. Absolutely there is no pleadings whatsoever in the petition filed by the revision petitioner as to material irregularity or fraud, which vitiate the sale. In the absence of any materials to show that the sale is affected by the above two grounds, the trial court is right in rejecting the application. Hence submitted that revision lacks merits and liable to be dismissed.

5.No doubt that the application has been rejected at threshold by the trial Court on the ground that the petitioner has not pleaded any material irregularity or fraud in publishing or conducting the sale. Further no substantial injury has also been established. Petition under Order 21 Rule 90 filed by the revision petitioner is also indicated that no such pleadings were made and warrants no interference of the order of the trial Court. No doubt that the property in question is an ancestral property and the revision petitioner has right in the property. According to revision petitioner, the property should not have been sold for higher value. Though prima facie it appears to be convincing, since the application lacks details of any material irregularity or fraud, which are essential conditions to avoid sale, merely on the basis of the oral submissions, this Court is not inclined to set aside the order of the trial Court. However, taking into note of the fact that the delivery has not been effected so far, and the property is still in the possession of the petitioner as a co-owner, liberty is granted to the revision petitioner to raise all his legal grounds in application, which has to be filed under Order 21

N.SATHISH KUMAR, J.,

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Rule 97. On filing of such petition, the Court below shall decide all the issues that may be raised by the revision petitioner, keeping in mind the rights of the parties in the suit property. The Court below shall also taken into consideration of the fact that whether Order 21 Rule 64 properly complied in this aspect.

6. With the above observations, the revision petition is dismissed. The revision petitioner is also permitted to withdraw a sum of Rs.1,00,000/-, which was deposited by him before the trial Court, as per order passed by this Court dated 07.12.2012 in M.P.No.1 of 2012 in CRP.(NPD).No.4143 of 2012. The trial court shall dispose of the Execution Petition within a period of six months. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2019

Speaking Order / Non Speaking Order

Index : Yes / No

Internet : Yes

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To
The Principal District Munsif,
Principal District Munsif Court,
Bhavani.

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