

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No. 2439 of 2013
and M.P.No.1 of 2013

1. E.Munnusamy Naicker (Deceased)
 2. K.Chokkammal
 3. M.Govindasamy
 4. M.Srinivasan
- ... Petitioners

Petitioners 2 to 4 brought on record as
Lrs of the deceased sole petitioner
E.Munnusamy Naicker vide Court
order dated 07.03.2019 made in CMPs
6057,6058 and 6066/2019 in CRP
2439/2013 (NSKJ)

Vs.

1. C.Narayana Samy Naicker
2. S.Balaji
3. Lokannan

R3 brought on record as
LRs of the deceased sole petitioner
E.Munnusamy Naicker vide Court
order dated 07.03.2019 made in CMPs
6057,6058 and 6066/2019 in CRP
2439/2013 (NSKJ)

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of
Constitution of India against the order dated 06.04.2013 made

in E.A.Sr.No.863 of 2013 in E.P.No.39 of 2005 on the file of the Sub-Ordinate Judge, Maduranthagam.

For Petitioners : Mr.K.Balakrishnan

For Respondents: No appearance for R1 and R2

ORDER

This civil revision petition has been filed against the order of the trial court dismissing the application filed by the judgment debtor to set aside the sale.

2. The trial Court has rejected the petition on the ground that the above petition is not maintainable on the ground of limitation, thereafter, an application *inter alia* filed that the judgment debtor has paid the entire decree amount to the decree holder and decree holder has also executed necessary receipt in this regard.

3. When execution proceedings was posted on 29.07.2007, the full satisfaction memo has to be filed before the Court, but, the Judge was on leave on that particular day, they could not file a full satisfaction memo. The execution petition pending for sale of property on 29.10.2007 was originally adjourned to 26.11.2007 on

the ground that the Judge was on casual leave. The original records of the Court also shows the above facts, but, surprisingly on 05.11.2007, the entries were made in the notes paper, as if, the sale was conducted and auction purchaser took the property.

4. In a nut shell, it is the contention of the revision petitioner that the entry has been made later with the convenience of the auction purchaser when the Judge was on casual leave. When the matter was already adjourned to 26.11.2007, the possibility of bringing the property on sale on 05.11.2007 is ruled out. When the sale was adjourned without settling the proclamation, the properties cannot be sold within a period of few days without any fresh proclamation or notice etc. The petition filed by the petitioner proceeded on the ground that fraud committed in sale of property, but, the trial Court has rejected the petition on the ground of limitation without going into the merits of the matter.

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5. This Court called for the original Records from the Court below. Despite the direction by this Court to produce all the original records, the trial Court has not produced the original notes paper in Execution Petition No.39 of 2005. Though in the docket, it shown as notes paper of E.P.No.39, but, actually notes paper of E.P.No.39 has

not been sent. The concerned Judge have to see and verify all those documents before sending it to the Court, which has not been done so.

6. The above facts coupled with the fact that the xerox copy of the certified copies obtained from the lower Court placed before this Court shows that on 02.10.2007, correction has been made in the date as 02.12.2007, whereas, on the particular day, the following has been recorded as "RDO memo received. J.O. on in charge. No sitting reposted to 05.11.2007, further hearing on 09.11.2007." Thereafter, on 09.11.2007, it was shown as a declared holiday. On 12.11.2007, it was recorded as "the matter has been taken today and Full satisfaction memo has been filed by the decree holder also received" and the entries indicates the same. On 19.11.2007, it indicates that the auction purchaser has purchased the property for a sum of Rs.37,500/-, whereas, the sale certificate shown as the property was sold as early as on 05.11.2007. If really, the Judge was on casual leave, the question of handing over the case to other Judge would not arise that too in the Mofussil area. Surprisingly, in the notes paper, the entries has been made, as if, the RDO memo received. J.O. on in charge. No sitting reposted to 05.11.2007.

7. According to the revision petitioner, in the diary, the adjournment day was shown as 26.11.2007, in the meanwhile, the sale has been taken place without a further proclamation what so ever as mandated under Order XXI Rule 66, if sale is adjourned and could not be held, however, in subsequent sale, there must be a fresh proclamation. The law mandates such a procedure and also there must be a reasonable time gap between the proclamation and date of sale, whereas, in this case, it appears that within a few days, the sale has said to have been taken place. All these facts shows something fishy in the entire transaction.

8. Accordingly, all the above facts are to be gone in to by trial Court and it has to go into all these aspects and decide the petitions on merits. Similarly, considering the certified copies produced before the Court and interpolations and corrections in notes paper, these facts are also required to be seen by the Trial Court. The trial Court shall decide the entire issue in fresh in terms of the allegations made by the petitioner. Particularly, the entries made in the certified copies of notes papers produced before their Court and decide the matter afresh, till such time, any application filed by the principal or by the auction purchaser shall not be decided

without deciding the petition.

N.SATHISH KUMAR,J.

msv

9. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.04.2019

msv

Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

To

The Sub-Ordinate Judge,
Maduranthagam.

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