IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2019

Pronounced on : 14.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(NPD).No.61 of 2015
and
M.P.Nos.1 to 3 of 2015

Purushothaman .. Petitioner

V.

Ranganathan (deceased)

Sivakamasundari .. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the learned I Additional Sub-ordinate Judge, Cuddalore to re-open the execution proceedings in E.P.No.93 of 2009 in O.S.No.20 of 2006 which was closed on 12.12.2014.

For Petitioner : Mr.K.Radha Krishnan

For Respondent : Mr.D.Ravichander

ORDER

The present revision is filed seeking for reopening of the execution proceedings in E.P.No.93 of 2009 in O.S.No.20 of 2006, which came to be closed on 12.12.2014 by the learned I Additional Sub-ordinate Judge, Cuddalore.

2.Heard Mr.K.Radha Krishnan, learned counsel for the petitioner and Mr.D.Ravichander, learned counsel appearing on behalf of the respondent.

3.The brief facts of the case is as follows:

3.1) The first respondent/deceased Ranganathan had filed a money suit in O.S.No.20 of 2006 before the learned Principal Sub-ordinate Judge, Cuddalore and a decree was passed against the petitioner herein directing payment of a sum of Rs.2,53,800/- together with interest on Rs.2 lakhs at the rate of Rs.9% per annum from the date of plaint till the date of decree and thereafter, at 6% per annum from the date of decree till the date of realization together with costs.

3.2) Pursuant to the decree, the respondent herein had filed an execution petition in E.P.No.93 of 2009 before the learned I Additional Subordinate Judge, Coimbatore for recovery of Rs.3,32,059/- by attaching and selling the petitioner's residential property comprised in Sur.No.28/1 of Koothapakkam Village, Cuddalore District measuring 1800 Sq. feet. The Execution Court had attached the said property and the proclamation of sale was ordered on 08.03.2012. The property came to be auctioned on 28.06.2012 and sold for a sum of Rs.6,51,000/-.

3.3) The petitioner herein had obtained a lodgement schedule challan on 11.10.2013 and had deposited the entire amount claimed in the Execution Petition to the tune of Rs.4,11,650/-, which includes the further interest also. Thereafter, he had filed two applications in the execution proceedings seeking for leave to file additional documents and for leading oral evidence. However, Execution Petition came to be dismissed on 12.12.2014. Being aggrieved by the closure of the execution proceedings, the present Civil Revision Petition has been filed.

4.The sole ground raised by the learned counsel for the petitioner herein is that when a sale is adjourned under Order 21 Rule 69(1) of CPC., for a longer period over 30 days, a fresh sale proclamation requires to be issued under Rule 67, prescribing the time and date of sale. Since the sale proclamation was made by the Execution Court on 08.03.2012 and subsequently adjourned to 07.06.2012, which adjournment is more than 30 days, the consequent sale made on 28.06.2012 is illegal and requires to be set aside.

5.The learned counsel for the respondent/decree holder, on the other hand submitted that, there was no infirmity in the auction sale. According to the learned counsel for the respondent, when the property has been sold in Court auction, the same is liable to be confirmed under Order 21 Rule 92 of CPC., in the absence of any application made under Order 21 Rule 89, 90, or 91 of CPC. Since the petitioner has not preferred to file any application under Rule 89, 90 or 91 of CPC., no indulgence requires to be extended to the petitioner herein. He would also submit that even if the provisions under Order 21 Rule 69 has been violated, it is an irregularity and the petitioner herein ought to have filed an application under Order 21 Rule 90 CPC., to set aside the sale on the ground of irregularity. Since Article 127 of the Limitation Act, prescribes a limitation of 60 days to set aside the sale and the petitioner has not been filed any application under Order 21 Rule 90 CPC., his submission that the sale requires to be set aside for violation of the procedure under Order 21 Rule 69 of CPC., cannot be countenanced and as such, he sought for rejection of the civil revision petition.

6.I have given careful consideration to the submissions made by the respective counsels.

7.It is not in dispute that the decree passed in O.S.No.20 of 2006 has become final and that the property attached in the execution proceedings has been sold in Court auction on 28.06.2012. It is also not in dispute that the petitioner herein had not filed any application under Order 21 Rule 89, 90 or 91 of CPC., to set aside the sale.

8.The sale proclamation was made on 08.03.2012 and the property came to be sold through Court auction on 28.06.2012. Thereafter, the petitioner herein had deposited the entire claim amount of Rs.4,11,650/- before the Execution Court. The only ground on which the petitioner seeks to have the sale set aside is that the provision of Order 21 Rule 69 of CPC., has been violated. The counter to such submission is that in the absence of any application under Order 21 Rule 90 CPC., to have the sale set aside on the ground of irregularity, such a ground cannot be maintained.

9.Order 21 Rule 69(1) CPC., empowers the Execution Court to adjourn any sale by recording the reasons for such adjournments. Rule 69(2) of CPC., prescribes that when the sale is adjourned under Rule 69(1), for more than 30 days, a fresh proclamation shall be made. For the sake of convenience, Order 21 Rule 69(1) and (2) are extracted below:

> *"69.**Adjournment or stoppage of sale**:-*
>
> *(1)The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:*
>
> *Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.*
>
> *(2)Where a sale is adjourned under sub-rule (1) for a longer period than (thirty days), a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it."*
>
> *......"*

10.While Rule 69(1) CPC., empowers the Execution Court to adjourn the sale, Rule 69(2) CPC., mandates the Execution Court to issue a fresh proclamation, if the adjournment is more than 30 days. The word used in Rule 69(2) of CPC., "shall be made" and as such, the provision is mandatory in nature. It is not in dispute that the sale was made after the expiry of 30 days from the date of proclamation of the sale. As such, the Execution Court ought to have issued a fresh proclamation under Order 21 Rule 67 of CPC., before venturing to sell the property in Court auction.

11.I am not in agreement with the objections raised by the respondent's counsel that unless an application under Order 21 Rule 90 CPC., to set aside the sale on the ground of irregularity is made, the sale cannot be set aside. There is a vast difference between the terms "irregularity" and "illegality". The term employed under Order 21 Rule 90 CPC., is "irregularity" which in common English Parlance means "*an act which is not according to the usual rules or is not normal*" . Whereas the term "illegality" means "*an act which is not allowed in law*". When Order 21 Rule 69 of CPC., mandates a fresh proclamation when a sale is adjourned over a period of 30 days, violation of the same can only be termed as an act of "illegality" and not "irregularity". When there is an illegality in the entire sale proceedings in view of the violation of the procedure mandated under Order 21 Rule 69(2) of CPC., the auction sale itself would be vitiated as an act of "illegality". Since Order 21 Rule 90 CPC., empowers the execution Court to set aside a sale on the grounds of material irregularity or fraud, such an application would be irrelevant to set aside an illegal sale.

12.The Hon'ble Apex Court in a decision reported in ***1995 (3) SCC 579 [Nani Gopal Paul V. T.Prasad Singh and others]*** had an occasion to observe that when an illegality in the conduct of the courts sale has been brought to the notice of the court, such a court cannot remain a mute or helpless spectator, but would set aside such an illegal sale. The relevant portion of the order reads as follows:

> *"4.We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in. bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the court Receiver as approved by the learned single Judge. Confirmation of sale was illegal. Though, as contended by Sri. Ganesh that normally an application under Order 21 Rule 89 or 90 or under s.48 CPC need to be filed within limitation to have the sale conducted by the court set aside and that procedure need to be insisted upon, we are of the view that this court or appellate court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting court sales. We are informed and it is not disputed that the appellant had deposited only Rs.5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal.*
>
> *5.Accordingly, the sale and confirmation thereof on 29.8.90 are set aside."*

The situation in which the Hon'ble Apex Court was constrained to observe as above, is almost similar to that of the case in hand. When this Court has found that the mandatory provision of Order 21 Rule 69(2) of CPC., has been violated and consequently held that the sale itself is illegal, the further proceedings in the execution would cause serious prejudice to the petitioner.

13.The learned counsel for the respondent also submitted that the petitioner herein had deposited the entire claim amount on 11.10.2013 only, which is after 60 days from the date of sale i.e., from 28.06.2012 and in view of Order 21 Rule 89(1) of CPC., the Court cannot set aside the sale. In support of his submissions, the learned counsel for the respondent relied upon the decision of the Hon'ble Apex Court in ***Ram Karan Gupta V. J.S. Exim Limited and others*** reported in ***2012 (13) SCC 568***. I do not intend to go into this proposition, as the law is well settled on that aspect. Nevertheless, since this Court has held that the sale itself is vitiated in view of the illegality committed by violating the provisions of Order 21 Rule 69(2) of CPC., such a ground raised does not require any consideration.

14.It is now brought to my notice that the entire claim amount in the execution proceedings along with future interest has already been deposited before the Execution Court. As such, the interest of the respondent herein, who is the decree holder is well protected and he would be entitled to withdraw the sum. The petitioner herein, who is the judgment debtor, having discharged his entire liability, would be entitled to revive his property and thereby, auction sale conducted by the Execution Court on 28.06.2012 in E.P.No.93 of 2009 in O.S.No.20 of 2006, is hereby set aside.

15.In view of these findings, the respondent herein/decree holder is granted liberty to make an appropriate application before the Execution Court seeking for withdrawal of the decree amount lying in its deposit. It is needless to mention here that the auction purchaser, who is claimed to have deposited 5% of the auction sale amount before the Execution Court, will also be entitled to withdraw the same.

16.With the above findings, the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

14**.02.2019**

Index : Yes
Order :Speaking

Note:Issue order copy on 18.02.2019
DP

To

The I Additional Sub Court,
Cuddalore.

M.S.RAMESH, J.

DP

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CRP.(NPD).No.61 of 2015
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