

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.3413 of 2013 and
M.P.No.1 of 2013

N. Pandian

... Petitioner

v.

1. Mrs. S. Banumathy
2. Mr. M. Kishore Kumar
3. Mr. N. Vijayakumar
4. Mr. N. Sekar
5. Mr. N. Ashok Kumar
6. Mrs. Nagarathinam
7. Mr. Suresh Kumar
8. Mrs. B. Gnanambal
9. Mrs. C. Mohana
10. Mrs. J. Amsa
11. Mr. N. Murugan
12. Mr. N. Kumar
13. Mrs. Muthulakshmi
14. Mrs. M. Usha
15. Mrs. N. Chitra

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and order dated 04.07.2013 made in I.A.No.3956 of 2013 in I.A.No.19780 of 2007 in O.S.No.5429 of 1993 on the file of the Court of the XIV Assistant City Civil Judge at Chennai.

For Petitioners : Ms. S. Hamsa
for Mr. A. Abdul Kader

For Respondents : Mr. M. Kamalanathan – For R3,
No Appearance - for R1 & R2
R4 – Died
R5 to R15 – Ex parte

ORDER

Challenging the order passed in I.A.No.3956 of 2013 in I.A.No.19780 of 2007 in O.S.No.5429 of 1993 on the file of the XIV Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

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2.1 The 3rd respondent-plaintiff filed the suit in O.S.No.5429 of 1993 for partition and for other reliefs. The Trial Court, passed a preliminary decree for partition on 28.07.2000.

2.2 Thereafter, the plaintiff filed an application in I.A.No.19780 of 2007 in O.S.No.5429 of 1993 for passing of final decree. In the final decree application, the suit property was brought to sale in public auction. For selling the property in public auction, the 2nd respondent was appointed as an Advocate Commissioner, who auctioned the property in public auction on 21.09.2009. The 1st respondent participated in the auction and was declared as the highest bidder for a sum of Rs.32,00,000/-. The 1st respondent also deposited the bid amount to the credit of the suit.

2.3 Thereafter, the 1st respondent filed an application in I.A.No.4792 of 2010 to register the sale deed in her favour. The said application was contested by the 1st defendant on the ground that the auction was not conducted properly and that the property was purchased by the 1st respondent in collusion with the Advocate Commissioner.

2.4 In the interregnum, the 2nd respondent-Advocate Commissioner, filed a memo claiming additional remuneration and the Executing Court, ordered an additional remuneration of Rs.32,000/- to the Advocate Commissioner.

3. The Executing Court, by order dated 17.09.2012, dismissed the application in I.A.No.4792 of 2010 filed by the auction purchaser finding that the auction was not conducted in accordance with the provisions of Order XXI, Rule 82-96 of C.P.C. and there were no irregularities in the conduct of the auction sale. While passing such an order, the Executing Court, ordered to refund the sum of Rs.32,00,000/- deposited by the auction purchaser to her.

4. Thereafter, the 1st respondent-auction purchaser filed an application in I.A.No.1229 of 2013 praying for refund of the sum of Rs.32,00,000/- deposited by her.

5. The Executing Court, by order dated 18.02.2013, ordered the application for refund of Rs.32,00,000/- by issuing the cheque in favour of the auction purchaser. While issuing the cheque, it was noticed that out of the sum of Rs.32,00,000/-, a sum of Rs.32,000/- was paid to the Advocate Commissioner as additional remuneration.

6. In these circumstances, the auction purchaser filed an application in I.A.No.3956 of 2013 to direct the Advocate Commissioner or plaintiff to deposit the sum of Rs.32,000/-, which was withdrawn by the Advocate Commissioner. The plaintiff and the Advocate Commissioner filed their counter and contested the application.

7. The Executing Court, after taking into consideration the case of both the parties, held that the plaintiff and the 1st defendant are liable to deposit the sum of Rs.32,000/- jointly into the Court.

8. It is pertinent to note that the Executing Court has ordered a sum of Rs.32,000/- as additional remuneration to the Advocate Commissioner. The auction purchaser, who had deposited a sum of Rs.32,00,000/-, cannot be burdened with payment of Rs.32,000/- as additional remuneration to the Advocate Commissioner, who was appointed at the instance of the plaintiff.

9. In a suit for partition, all the parties are plaintiffs and defendants. It is brought to the notice of this court that all the parties are benefited by the final decree passed by the Trial Court. In such a case,

the plaintiff and the 1st defendant are liable to pay the additional remuneration of Rs.32,000/- to the Advocate Commissioner. The deduction of Rs.32,000/- from the amount paid by the auction purchaser is erroneous. The Executing Court, has rightly held that the plaintiff and the 1st defendant are liable to deposit the sum of Rs.32,000/- .

10. In these circumstances, I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.09.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

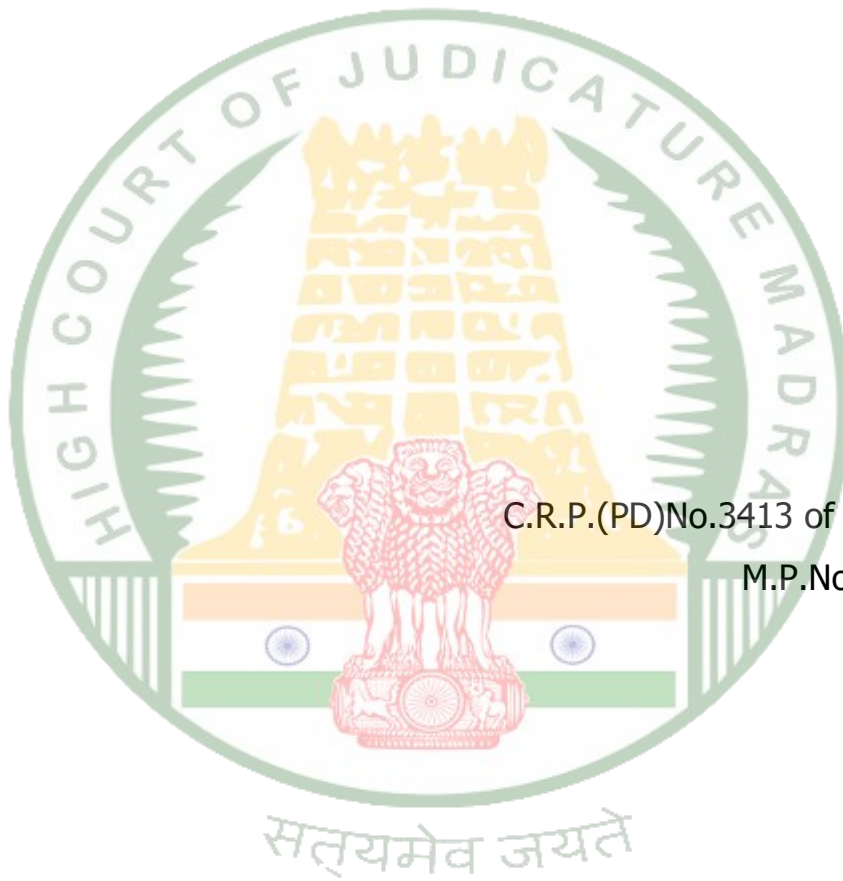
The XIV Assistant Judge,
City Civil Court,
Chennai,

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M.DURAISWAMY, J.

Rj



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