

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.07.2018

Pronounced on : 12.06.2019

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.1741 of 2018 and
C.M.P.No.9548 of 2018

N.Palaniappan ... Petitioner

Vs.

T.Ganesa Udayar ... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the common fair and decretal order dated 27.03.2018 made in unnumbered E.A. of 2018 in E.P.No.199 of 2010 in O.S.No.178 of 2005 on the file of the learned Principal District Munsif Court at Virudhachalam.

For Petitioner : Mr.D.Anandraja

For Respondent : Notice Served No Appearance

ORDER

The revision petitioner is petitioner in unnumbered Execution Application in E.P.No.199 of 2010 in O.S.No.178 of 2005. The respondent is the decree holder and petitioner is judgment debtor in the above suit. The respondent after getting decree of recovery of money from the petitioner, has filed execution petition in E.P.No.199 of 2010 and also filed a petition for raising attachment of the properties and the same was allowed as prayed for and the properties are

brought for sale. Since no one was come forward to purchase the properties in the Court auction, the respondent/deGREE holder himself after getting necessary permission had purchased the properties, which was challenged by the petitioner in the present civil revision petition.

2 According to learned counsel appearing for the revision petitioner, the sale was not properly conducted by the execution Court. The property was not valued properly and the Court has fixed only the guideline value not the market value. The guideline value is very low, when comparing with the market value. The respondent filed documents for fixing value of the property, which was brought for auction, and the Execution Court colluding with the respondent has fixed the value, which is very low and is liable to be set aside. Even the decree itself has been obtained by the respondent with support of the forged promissory notes. Further the respondent/ decree holder has not paid the amount immediately after completing the auction. On the whole, the Execution Court ought not to have allowed the respondent to purchase the properties for the value fixed, which is very low.

3 It is the contention of the respondent/decreed holder before the Execution Court that the suit was filed and decree was obtained in the year 2005 and the respondent, who is a decreed holder, has filed execution proceedings in the year 2010 i.e. after five years of decree. The petitioner/judgment debtor did not challenge the decree, but, now, when the respondent/decreed holder filed execution petition, that too, after five years of decree, has raised objections only with an intention to drag on the execution proceedings, in order to prevent the respondent/decreed holder from enjoying the fruits of the decree. Pending the execution proceedings, son of the decreed holder has filed a petition seeking to remove one of the property from attachment and the Execution Court, since remaining properties would suffice to satisfy the decree amount, has also allowed the same. Thereafter, remaining properties were brought for sale and since no one had come forward to participate in the Court auction, even after reducing the upset price for three times, the respondent/decreed holder himself after obtaining necessary permission, had purchased the properties for a value of Rs.1,41,000/- and the respondent after deducting the decree amount of Rs.1,19,326/- had also deposited the amount of Rs.21,674/- and the matter was posted for confirmation of sale by the Execution Court. The petitioner/judgment debtor would have purchased the properties

for higher price or he would have taken any steps to sell the properties for higher value, if he so desire and the petitioner instead of doing that, has waited till the properties was purchased by the respondent and now has raised objections, which cannot be good in law. Therefore, the sale as confirmed by the Execution Court need not be interfered with.

4 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5 Admittedly the respondent filed a suit and obtained decree in his favour and after five years of decree had filed execution petition. It is seen that till filing of the execution petition by the respondent/deGREE holder, the petitioner did not challenge the decree of the Court below and on the date of filing of execution petition, the decree was in force. Even during pendency of the execution proceedings, son of the petitioner/judgment debtor has filed a petition seeking to remove one of the items from attachment and the same was also allowed by the Execution Court. After adopting the procedures under Order XXI CPC, proclamation and sale was fixed for remaining items and subsequently upset price was reduced for three

times, since no one has come forward to participate in the Court auction. At last, the respondent/decreed holder himself after obtaining necessary permission, had participated in the Court auction and purchased the properties and after deducting the decree amount has deposited the sale amount. The petitioner had actively participated in the execution proceedings, but, he has not raised any such objection at that time and only when the matter was posted for confirmation of sale, the petitioner filed the petition under Section 47 of CPC questioning the legality of the sale.

6 On a perusal of the entire records, it is seen that the Execution Court has meticulously followed the procedures as contemplated under CPC. Even though, it was contended by the petitioner that the decree itself has been obtained by fraud, once the decree is not challenged by the petitioner then he has no legs to challenge the same at the stage of execution proceedings. So far as the market value of the properties is concerned, execution Court has clearly stated that since no one has come forward to participate in the Court auction, the upset price of the properties has been reduced for three times. At that time, the petitioner neither taken any steps to arrange money to discharge the decree nor arranged for bidder to buy

the properties for higher value. The Execution Court has observed that the document submitted by the petitioner for fixing the value of the properties is covering Natham House site, whereas, the subject properties are dry land and therefore that cannot be taken into consideration for fixing upset price. There is no impediment for the petitioner either to arrange any bidder to buy the properties for higher price or to discharge the decree, but, after selling the properties to the respondent/deedee holder and after completing all the legal procedures, now when the matter was posted for confirmation of sale, the petitioner cannot question the legality of the sale done by the Execution Court, unless circumstances warrants, and act of the petitioner shows that the petitioner intended to drag on the execution proceedings.

7 This Court does not find any merit in the revision and the same is dismissed for the foregoing reasons. Consequently connected miscellaneous petition is closed. No costs.

WEB COPY

12.06.2019

Index: Yes/No

cgi

To

The Principal District Munsif, Virudhachalam.

P.VELMURUGAN, J.,

cgi



Pre-Delivery Order in
C.R.P.(NPD)No.1741 of 2018

WEB COPY

12.06.2019