IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2019

DELIVERED ON : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.1011 of 2014
&
M.P.No.1 of 2014

Ramalingam ... Petitioner

Vs

1.Rathinambal
2.Chinnadurai
3.Sundaravalli
4.Seethapathy
5.Saravanan
6.Anusuya ... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order dated 07.03.2014 in E.A.No.4 of 2005 in E.P.No.33 of 1985 in O.S.No.30 of 1983 on the file of the Subordinate Judge, Panruti.

For Petitioner : Mr.N.Suresh

For Respondents 1 & 2 : Mr.V.Lakshmi Narayanan

Respondents 3 to 6 given up

ORDER

The only point for consideration in this civil revision petition is whether the limitation period for filing an application seeking delivery of possession under Order XXI Rule 95 CPC by the auction purchaser starts from the date of confirmation of sale or from the date of issuance of the sale certificate.

Brief facts leading to the filing of the instant revision:

2. The instant civil revision petition has been filed challenging the order dated 07.03.2014 passed by the Subordinate Judge, Panruti, allowing E.A.No.4 of 2005 in E.P.No.33 of 1995 in O.S.No.30 of 1983 filed by the respondents 1 and 2 under Order XXI Rule 95 CPC seeking delivery of possession of the property which was purchased by the second respondent through Court auction. The case of the petitioner is that the property was sold by the executing court on 31.03.1986 and the sale was confirmed in favour of the second respondent/auction purchaser on 25.10.1989 and therefore, the application filed under Order XXI Rule 95 CPC by the respondents 1 and 2 on 14.01.2005 in E.A.No.4 of 2005 for delivery of possession is barred by the law of limitation as it is hit by the provisions of Article 134 of the Limitation Act.

3. As per Article 134 of the Limitation Act, an application for delivery of possession by an auction purchaser will have to be filed within one year from the date when the sale becomes absolute. The contention of the petitioner/Judgment Debtor was rejected by the executing court viz., Sub Court, Panruti under the impugned order dated 07.03.2014 passed in E.A.No.4 of 2004 in E.P.No.33 of 1985 in O.S.No.30 of 1983. Aggrieved by the impugned order dated 07.03.2014 allowing the application filed under Order XXI Rule 95 CPC by the second respondent/auction purchaser, the instant Civil Revision Petition has been filed.

Submissions of the learned counsels:

4. Heard Mr.N.Suresh, the learned counsel for the petitioner and Mr.V.Lakshmi Narayanan, the learned counsel for the respondents 1 and 2.

5. The learned counsel for the petitioner drew the attention of this Court to the sale certificate issued in favour of the second respondent who is the auction purchaser under the court auction sale.

Referring to the sale certificate, the learned counsel for the petitioner would contend that the sale having been confirmed in favour of the second respondent on 25.10.1989 itself, the application filed by the respondents under Order XXI Rule 95 of CPC on 14.01.2005 is barred by the law of limitation. He further submitted that the petitioner has filed an application under Order XXI Rules 89 and 90 of CPC to set aside the sale which was dismissed for default on 25.10.1989. According to him, on the same date, the sale was confirmed in favour of the second respondent. Thereafter, the petitioner filed an application for restoration of the application filed under Order XXI Rules 89 and 90 CPC to set aside the sale which was restored to the file of the executing court on 02.03.1990.

6. The learned counsel for the petitioner further submitted that the application filed by the petitioner under Order XXI Rules 89 and 90 CPC to set aside the sale in favour of the second respondent was decided on merits and dismissed on 14.12.2004. According to the learned counsel for the petitioner, the order dated 25.10.1989 confirming the sale in favour of the second respondent remain unchanged, since no

consequential order to set aside the order of confirmation of sale was passed by the executing court thereafter. According to the learned counsel for the petitioner, the respondent has filed the application under Order XXI Rule 95 CPC for delivery of possession only on 14.01.2005, even though the sale was confirmed as early as on 25.10.1989. Hence, according to the learned counsel for the petitioner, the application under Order XXI Rule 95 CPC filed by the respondents is barred by the law of limitation as it is hit by Article 134 of the Limitation Act, which prescribes that the said application will have to be filed within one year from the date of confirmation of sale.

7. The learned counsel for the petitioner drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of ***Balakrishnan vs. Malaiyandi Konar*** reported in ***2006 (3) CTC 180*** and submitted that the period of one year prescribed under Article 134 of the Limitation Act commences from the date of confirmation of sale and not from the date when the sale certificate was issued to the auction purchaser. In particular, he referred to paragraph 14 of the said Judgment which is extracted hereunder:

" 14. The limitation for the purpose of Article 134 starts from the date of confirmation of sale. See ***Ganpat Singh (dead) by LRs. v. Kailash Shankar and Ors****., 1987 (3) SCC 146. In* ***Pattam Khader Khan v. Pattem Sardar Khan and Anr****., 1996 (5) SCC 48, this Court held that it is not from the date when sale certificate is issued that the limitation starts running. The sale becomes absolute on confirmation under Order 21, Rule 94 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order 21 Rule 94. There can be variety of factors conceivable for which delay can be caused in issuing a sale certificate. The period of one year limitation now prescribed under Article 134 of the Limitation Act in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act, 1908 is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing a quick forum to the auction purchaser to ask for the delivery of possession of the property purchased within that period from the date of the sale becoming absolute rather than from the date of issuance of the sale certificate. On his failure to avail such a quick remedy the law relegates him to the remedy of a regular suit for possession based on title, subject again to limitation."*

8. Per contra, the learned counsel for the respondents 1 and 2 would contend that the application filed by the respondents under Order XXI Rule 95 CPC seeking delivery of possession has been filed on 14.01.2005 immediately after the sale certificate was issued to the second respondent by the court on 23.12.2004. He submitted that the sale was confirmed in favour of the second respondent on 25.10.1989, when the application filed by the petitioner under Order XXI Rule 89 and 90 CPC to set aside the sale, was dismissed for default on 25.10.1989.

9. The learned counsel for the respondents 1 and 2 would further submit that immediately, the petitioner filed an application to restore the petition filed under Order XXI Rule 90 CPC which was dismissed for default on 25.10.1989 and the same was restored to the file of the executing court on 02.03.1990. According to him, consequently, confirmation of sale made on 25.10.1989 was automatically set aside, in view of the restoration of the application filed by the petitioner to set aside the sale in favour of the second respondent.

10. According to the learned counsel for the respondents 1 and 2, the application to set aside the sale in favour of the second respondent/auction purchaser came to be finally dismissed on 14.12.2004 on merits. Since the sale certificate was issued only on 23.12.2004, the application filed on 14.01.2005 under Order XXI Rule 95 CPC is within the period of limitation.

11. The learned counsel for the respondents 1 and 2 drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of ***United Finance Corporation vs. M.S.M.Haneefa*** reported in ***MANU/SC/0035/2017***. Referring to the said judgment, the learned counsel for the respondents 1 and 2 submitted that the Hon'ble Supreme Court only after considering the Judgments of ***Ganpat Singh (Dead) by LRs v. Kailash Shankar and Ors.*** reported in ***(1987) 3 SCC 146*** and ***Pattam Khader Khan v. Pattam Sardar Khan and Anr*** reported in ***(1996) 5 SCC 48***, which led to the passing of the Judgment namely ***Balakrishnan vs. Malaiyandi Konar*** reported in ***2006(3) CTC 180*** cited by the learned counsel for the petitioner, the Hon'ble Supreme Court has

held that when a revision is pending, sale will not become absolute and only after the disposal of the revision, the sale will become absolute. Relying on the said Judgment, the learned counsel submitted that in the case on hand also, the application filed by the petitioner to set aside the sale in favour of the second respondent was ultimately dismissed only on 14.12.2004 and the sale certificate was also issued thereafter on 23.12.2004 and hence, the application filed under Order XXI Rule 95 CPC on 14.01.2005 is well within the period of limitation as prescribed under Article 134 of the Limitation Act.

Discussion:

12. Order XXI Rule 94 and 95 CPC will have to be read conjointly for deciding the issue involved in this revision.

<u>Order 21 Rule 94 reads as follows:</u>

> *94.Certificate to purchaser – Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale become absolute.*

<u>Order 21 Rule 95 reads as follows:</u>

> *95.Delivery of property in occupancy of judgment-debtor-Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.*

It is clear from the above provisions, that on confirmation of sale, the Court shall issue a sale certificate in favour of the auction purchaser. Under Order XXI Rule 95 CPC, it is clear that without the sale certificate, the auction purchaser cannot file an application, seeking delivery of possession from the judgment debtor. Only after the sale certificate is issued under Order XXI Rule 94 CPC, the auction purchaser can seek delivery of possession under Order XXI Rule 95 CPC by filing an application along with the sale certificate issued by the Court in his or her favour.

13. In the case on hand, there is no dispute that the sale certificate was issued to the second respondent/action purchaser only on 23.12.2014. It is also an admitted fact that between 25.10.1989 and 14.12.2004, the proceedings initiated by the petitioner to set aside the sale under Order 21 Rules 89 and 90 CPC did not attain finality and it attained finality only on 14.12.2004 by the ultimate dismissal of E.A.No.526 of 1989 filed under Order XXI Rules 89 and 90 CPC on merits.

14. The petitioner filed an application to restore the application filed to set aside the sale which was dismissed for default on 25.10.1989 and the same was restored on 02.03.1990. As rightly contended by the learned counsel for the respondents 1 and 2 consequent to the restoration of E.A.No.526 of 1986 filed Order XXI Rule 89 and 90, the confirmation of sale made on 25.10.1989 was automatically set aside. Ultimately, the application to set aside the sale filed by the petitioner came to be dismissed on merits on 14.12.2004, and only thereafter, a sale certificate was issued to the second respondent/auction purchaser on 23.12.2004. On receipt of the sale certificate on 23.12.2004, the second respondent/auction purchaser filed the application namely,

E.A.No.4 of 2005 under Order 21 Rule 95 CPC seeking delivery of possession of the property from the petitioner who is the judgment debtor.

15. In the case on hand, the second respondent/auction purchaser filed application under Order 21 Rule 95 CPC on 14.01.2005 within one year from 23.12.2004 being the date of receipt of the sale certificate and therefore, the application has been filed well within the period of limitation as prescribed under Article 134 of the Limitation Act. But however, it is the contention of the petitioner that the sale was made absolute in favour of the second respondent on 25.10.1989 and hence, the application filed under Order XXI Rule 95 CPC on 14.01.2005 is barred by the law of Limitation, as it is hit by Article 134 of the Limitation Act. This contention of the learned counsel for the petitioner is absolutely baseless as the application under Order XXI Rule 95 CPC should be accompanied by a sale certificate.

16. Admittedly, in the case on hand, the sale certificate was issued in favour of the second respondent/auction purchaser only on 23.12.2004 and immediately thereafter, the application under Order XXI

Rule 95 CPC was filed on 14.01.2005. The learned counsel for the petitioner referred to a decision of the Hon'ble Supreme Court in the case of ***Balakrishnan vs. Malaiyandi Konar*** reported in ***2006 (3) CTC 180***. But, as seen from the said reported decision of the Hon'ble Supreme Court, an application under Order 21 Rule 95 CPC was not the main subject matter of consideration, though incidentally the Hon'ble Supreme Court had to deal with the said provision. In the said judgment, the judgment debtor objected to the execution petition filed by the decree holder against the property on the ground that the execution petition has been filed beyond the prescribed period of one year under Article 134 of the Limitation Act. The Hon'ble Supreme Court has confirmed the order of the High Court and remitted the matter back to the executing Court to decide the limitation issue in terms of Section 47 of the Code of Civil Procedure and consider whether there was any need for sale of the property in view of the deposit made by the judgment debtor. Therefore the issue which was subject matter of consideration in ***2006 (3) CTC 180*** referred to by the learned counsel for the petitioner is not an Order XXI Rule 95 application. Further, in that judgment, it is not known from the contents of the said judgment as to whether the sale certificate was issued to the auction purchaser and whether any application under Order 21 Rule 95 CPC was filed by the auction purchaser. Therefore, this Court is of the considered view that the said judgment reported in reported in ***2006 (3) CTC 180*** will not apply to the facts of the instant case.

17. The learned counsel for the respondents 1 and 2 drew the attention of this Court to a latest judgment of the Hon'ble Supreme Court on the subject in the case of ***United Finance Corporation vs. M.S.M.Haneefa*** reported in ***MANU/SC/0035/2017***.

18. This Court perused the said judgment and comes to the conclusion that the said judgment is squarely applicable to the facts of the instant case, as in an identical case while dealing with a similar issue, the Hon'ble Supreme Court held that the limitation period prescribed under the Article 134 of the Limitation Act commences only from the date when the application filed to set aside the sale was rejected and attained finality by the disposal of revision proceedings. The relevant paragraph of the said judgment is reproduced hereunder:

"17. Considering the facts of the present case in the light of the above principles, in our view, the sale could not

have become absolute till the proceedings in the revision in C.R.P. No. 2829/2002 was over and the revision was disposed of. The judgment-debtor, as discussed earlier, had filed two applications E.A. No. 315/2001-(i) to set aside the sale alleging that the property was sold for a lower price as a result of which substantial injury was caused to him and (ii) another application in E.A. No. 77/2002-an application for appointing Advocate-Commissioner to assess the value of the property. As against the order dismissing E.A. No. 77/2002, the judgment-debtor has filed the revision in C.R.P. No. 2829/2002. So long as the said revision was pending, the court auction sale was yet to become absolute. For the sake of arguments, assuming that the said revision was allowed, then in that case the court auction sale would have been set aside on the ground that the property was sold for a lesser price. Therefore, till the revision in C.R.P. No. 2829 of 2002 was disposed of in one way or the other, the sale was yet to become absolute. Be it noted that in Article 134 of the Limitation Act, the legislature has consciously adopted the expression "when the sale becomes absolute" and not when the sale was confirmed. As against the order dismissing E.A. No. 77/2002 since the revision was preferred by the judgment-debtor and the same came to be disposed of on 9th July, 2003 the sale became absolute only on 9th July, 2003. The application filed under Order XXI Rule 95 Code of Civil Procedure on 30th August, 2003 was well within the period of *limitation. In our view, the High Court was not right in holding that the application under Order XXI Rule 95 Code of Civil Procedure was barred by limitation and the impugned order cannot be sustained."*

19. The Hon'ble supreme Court while deciding the above referred case, has considered all the judgments referred to in the reported decision namely, ***2006 (3) CTC 180*** relied upon by the learned counsel for the petitioner.

20. All the judgments referred to ***2006 (3) CTC 180*** including the cases of ***Ganpat Singh (Dead) by LRs v. Kailash Shankar and Ors.*** reported in ***(1987) 3 SCC 146*** and ***Pattam Khader Khan v. Pattam Sardar Khan and Anr*** reported in ***(1996) 5 SCC 48***, were considered by the Hon'ble Supreme Court in ***United Finance Corporation*** case referred to supra and only thereafter, has come to the conclusion that the sale becomes absolute only when the rejection of the application to set aside the sale filed by the Judgment debtor attains finality by the disposal of the revision proceedings. In the case on hand, only on 14.12.2004, the dismissal of the application to set aside the sale attained finality and

thereafter, on 23.12.2004, when the sale certificate was issued in favour of the second respondent and therefore, the application filed under Order XXI Rule 95 CPC was filed by the respondents is well within the prescribed period of limitation as per Article 134 of the Limitation Act, as the sale become absolute only on 14.12.2004 when the proceedings attained finalty.

21. For the foregoing reasons, this Court is of the considered view that the application filed by the second respondent under Order XXI Rule 95 CPC is well within the prescribed period of limitation as per Article 134 of the Limitation Act as the sale certificate was issued on 23.12.2004 and the application was filed on 14.01.2005 within one year from the date of issuance of sale certificate. The point for consideration raised in this revision is answered in favour of the respondents by holding that the period of limitation for filing an application under Order XXI Rule 95 CPC commences only from the date of issuance of the sale certificate and only appear the sale becomes absolute in favour of the auction purchaser.

Conclusion:

22. In the result, there is no merit in this revision and the Trial Court has rightly allowed the application filed by the second respondent/auciton purchaser, under Order XXI Rule 95 CPC. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

03.07.2019

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

The Subordinate Judge, Panruti

ABDUL QUDDHOSE, J.

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Pre-delivery order in
CRP (NPD) No.1011 of 2014 &
M.P.No.1 of 2014

03.07.2019