



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..12..2019
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.4025 of 2019
and
C.M.P.No.26421 of 2019

U.Selvi

... Petitioner

-Versus-

G.Kathirvelu

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 03.09.2019 made in E.A.No.06 of 2019 in E.P.No.72 of 2012 in O.S.No.08 of 2009 by the learned District Judge, Karaikal, Puducherry Union Territory.

For Petitioner

: Mr.R.Sunil Kumar

ORDER

This revision petition is directed against the order passed by the learned District Judge, Karaikkal, dismissing the application in E.A.No.6 of 2019 in E.P.No.72 of 2012 filed under Section 141 of CPC to reject the Execution Application filed by the respondent/decreed-holder.

2. The petitioner is the judgement debtor. He suffered a decree for recovery of money. Pursuant to the decree, the respondent/decreed holder filed an execution petition and brought the property belonged to the petitioner for court auction. The respondent is the auction purchaser and a sale certificate has also been issued in his favour. Thereafter, he filed an application under Order XXI, Rule 95 of CPC for delivery of possession. At that time, the petitioner herein filed the application which is the subject matter of the revision on the ground that along with Execution Petition, neither original sale certificate nor certified copy of the same has been produced along with the application for delivery of possession. The executing court has dismissed the application by way of impugned order. Challenging the same, the petitioner is before this court with this revision petition.



WEB COPY

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the records carefully.

4. The learned counsel for the petitioner would contend that when the Execution Petition is for delivery of possession based on the sale certificate, it is all the more necessary that original or certified copy of the sale certificate and certified copy of the decree should be produced along with the Execution Petition. Whereas the respondent/ auction purchaser did not file the original or certified copy of the sale certificate and certified copy of the decree which is sought to be executed the along with the application for delivery of possession. Hence, the application cannot be maintained.

5. First of all the application has been filed by the respondent/auction purchaser under Order XXI, Rule 95 of CPC for delivery of possession. It is not in dispute that the respondent/auction purchaser was earlier issued with the sale certificate under Order XXI, Rule 94 of CPC. The contention of the learned counsel for the petitioner that under Rule 140 of Civil Rules of Practice production of the original sale certificate along with the application for delivery of possession cannot be countenanced for the simple reason that under Rule 140 of Civil Rules of Practice, a certified copy of the decree is required be filed along with the first petition for execution or transmission of decree. But, in the instant case, it was not the first Execution Petition and the respondent had already initiated an execution proceedings for attachment and the property was also attached and brought for auction. The respondent being auction purchaser initiated an execution proceeding under Order 21, Rule 95 of CPC for delivery. The decree holder shall not be required upon to produce the certified copy of the decree in any subsequent application for execution of the decree. Rule 140 of the Civil Rules of Practice contemplates production of certified copy of the decree together with the first application for execution of the decree. The court below has rightly considered the legal position in this regard and dismissed the application of the petitioner in which this court does not find any illegality or irregularity warranting interference with the same. This civil revision petition fails accordingly.



In the result, this Civil Revision Petition is dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The District Judge, Karaikal,
Puducherry Union Territory.

+1cc to Mr.R.Sunilkumar, Advocate Sr.102802

Civil Revision Petition
No.4025 of 2019

rk[co]
srg 15/07/2020