



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.662 of 2011

and

M.P. (MD) No.1 of 2011

Ramachandran : Petitioner/Respondent/
Defendant/Respondent

.. Vs ..

Sisubalan : Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the order and decretal order dated 12.03.2011 on the file of the learned Principal District Munsif, Kuzhithurai, made in E.A.No.92 of 2011 in E.P.No.38 of 2005 in O.S.No.90 of 2004 on his file and allow the said E.A.

For Petitioner : Mr.K.N.Thampi

For Respondent : Mr.K.Sreekumaran Nair

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ORDER

This Civil Revision Petition is filed by the defendant/judgment-debtor in the suit in O.S.No.90 of 2004. The respondent filed a suit against the revision petitioner for recovery of a sum of Rs.72,115/- and the suit was decreed for a sum of Rs.1,00,028/- along with interest at 6% per annum. As per the Execution Petition filed by the respondent a sum of Rs.1,03,643/- is recoverable. In the course of Execution Petition, the property of revision petitioner measuring an extent of 23 cents was attached and brought for sale. The revision petitioner filed a petition in E.A.No.92 of 2011 in E.P.No.38 of 2005, to dismiss the Execution Petition, saying that the entire portion of the property need not be sold for a small amount and that the Execution Petition for sale of entire land is not maintainable in law. According to the revision petitioner, the property that is attached is worth more than Rs.75,00,000/- and that a small portion of properties where there is no building can be brought for sale to satisfy the decree. Since the lower Court dismissed the said application, the present revision petition is filed by the judgment-debtor. Strictly



speaking such a petition is not maintainable as the petitioner can agitate this at the time of drawing sale proclamation.

2. The lower Court was of the view that the property that is brought to sale is a land measuring 16 cents along with terraced building with trees around and that the property is not divisible. However, the learned Counsel appearing for the revision petitioner submitted a plan and contended that an extent of 5 cents on the backyard of the property which had access from another road can be sold and there are persons who are willing to purchase the small piece of land in the same locality. The learned Counsel appearing for the respondent, however, submitted another plan and contended that the front portion of the property can be sold without hindrance to the back portion. As such, the issue whether the property is divisible or not has been agreed between the parties that there is a possibility of selling the property by lots and it is unnecessary for the entire property to be sold. In such circumstances, the learned Counsel appearing for the respondent suggested that the back portion as shown by the plan prepared by the revision petitioner may be allowed to sell with a condition that in case the property could not be sold, the property on the front side as suggested by the respondent should be brought to sale without any delay. The learned counsel appearing for the revision petitioner has no objection. The revision petitioner is also present before this Court. In such circumstances, the plan submitted by the revision petitioner is treated as Ex.C1 and the plan submitted by the respondent also is marked as Ex.C2. Both the plans shall form part of this order. Accordingly, the revision petition is allowed subject to the following terms. :

The lower Court is directed to proceed with the sale of property namely an extent of 5 cents which is shown in green colour in the plan filed by the revision petitioner. In case, there is no takers or the property could not be sold in the Court auction, the Executing Court may proceed with the execution by selling the property as suggested by the respondent in the Civil Revision Petition in accordance with the plan submitted by the respondent or the entire property as the Court may deem fit and necessary.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-77782[F] dated
26/07/2019)

+1 CC to M/s.K.N.THAMPI, Advocate (SR-78077[F] dated 26/07/2019)

C.R.P (NPD) No.662 of 2011
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JMN(09.08.2019) 3P : 4C