



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CRP. (NPD) (MD) No.657 of 2012
and M.P. (MD) No.1 of 2012

M.Muthuraj

... Petitioner/Petitioner/Plaintiff
-vs-

N.Selvarathinam

... Respondent/Respondent/Defendant

PRAYER: Petition is filed under Section 115 of Code of Civil Procedure to set aside the Fair and Decretal Order passed in E.P.No.66 of 2010 in O.S.No.100 of 2004 on the file of the Subordinate Judge, Srivilliputtur dated 10.08.2011.

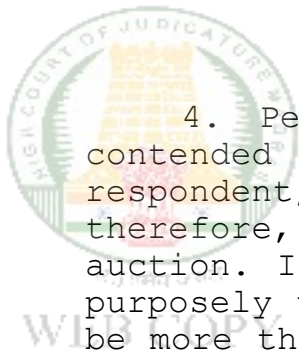
For Petitioner : Mr.M.Ashokkumar
For Respondent : Mr.S.Manohar

O R D E R

This Civil Revision Petition has been filed, challenging the judgment and decree dated 10.08.2011 passed in E.P.No.66 of 2010 in O.S.No.100 of 2004 by the Subordinate Judge, Srivilliputtur, by which the sale of $\frac{1}{4}$ th share of the respondent / judgment debtor was ore.

2. In the Execution Petition filed under Order 21 Rule 66 CPC for auction of the property and to permit the petitioner / plaintiff to participate in the auction bid, the Subordinate Court, by order dated 10.08.2011, had stated that the Court is not satisfied with the decree passed by the Court and hence, the application was ordered, by allowing the sale of $\frac{1}{4}$ th share of the respondent / judgment debtor alone.

3. The grievance of the petitioner is that when the suit itself is for recovery of money based on the promissory note, the observation touching upon the facts and merits of the case is not proper, that too, without discussing any of the facts pleaded by both the parties, as it is the bounden duty of the E.P. Court to execute the judgment and decree passed by the Civil Court and it cannot make any opinion on the judgment and decree passed by the Court. It is for the Appellate Court to either interfere or confirm the same.



4. Per contra, the learned counsel for the respondent has contended that in the suit schedule property, apart from the respondent, his daughters are also entitled to 1/4th share and therefore, the entire property in question cannot be brought for auction. It is also stated that the value of the property has been purposely undervalued, as the value of the property would certainly be more than Rs.75 lakhs. Since the Execution Petition was filed by the petitioner, by suppressing several facts, the Subordinate Judge, Srivilliputtur, taking into account all those factors, has rightly passed the judgment and decree, which calls for warrants no interference by this Court.

5. Considering the totality of the circumstances, this Court feels that the Subordinate Court, Srivilliputtur ought not to have exposed its dissatisfaction over the judgment and decree passed in the suit, as it is after all the primary duty of the E.P.Court to execute the judgment and decree, after considering the submissions on both sides. Therefore, I find substance in the submission made by the learned counsel for the petitioner, as the reason given by the Subordinate Judge, Srivilliputtur dated 10.08.2011 in E.P.No.66 of 2010 in O.S.No.100 of 2004 cannot be accepted and the same warrants interference by this Court.

6. Accordingly, this petition is allowed and the matter is remanded back to the Subordinate Judge, Srivilliputtur for consideration of the case of both parties so as to render a finding based on the judgment and decree passed in the suit. The E.P.Court is directed to proceed with the case on day to-day basis without adjourning the case beyond 10 working days at any point of time and to bring the issue to a logical end at the earliest. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

ar

To:

The Subordinate Judge,
Srivilliputtur.

Copy to:

The Section Officer,
VR Section(2 Copies),
Madurai Bench of Madras High Court, Madurai

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to Mr.S.MANOHAR, Advocate (SR-103041[F] dated 02/12/2019)
+1 CC to Mr.M.ASHOK KUMAR, Advocate (SR-102515[F] dated
29/11/2019)

CRP. (MD) No.657 of 2012 (NPD)
28.11.2019

MK (06.01.2020) 3P 6C