BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD)(MD) Nos.1711 & 1712 of 2013

N.Vivekanandhan ... Petitioner in both C.R.Ps.,

-Vs-

1.Ammapillai
2.G.Mohan
3.G.Selvam
4.G.Saravanan
5.N.Azhagesan
6.N.Murugesan
7.N.Padmanabhan
8.Mary Jesai
9.M.P.Teekal ... Respondents in both C.R.Ps.,

Prayer in C.R.(NPD)P(MD)No.1711 of 2013: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair and decreetal order in CMA No.1 of 2012 passed by the Principal Subordinate Judge, Nagercoil dated 02.07.2013 confirming the fair and decreetal order in E.A.No.62 of 2009 dated 20.01.2012 in E.P.No.124 of 1979 in O.S.No.165 of 1978 passed by the Principal District Munsif, Nagercoil and to set aside the same.

Prayer in C.R.P(NPD)(MD)No.1712 of 2013: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair and decreetal order passed by the Principal Subordinate Judge, Nagercoil in I.A.No.21 of 2012 in C.M.A.No.1 of 2012, dated 02.07.2013 and to set aside the same.

For Petitioner	:	Mr.K.P.Narayanakumar
For R8 & R9	:	Mr.R.Vijayakumar for Mr.T.Selvakumaran
For R7	:	No appearance
For R1 to R6	:	Exparte

COMMON ORDER

These Civil Revision Petitions have been filed by the judgment debtor, whose property was sold in execution of the decree in O.S.No.165 of 1978. The petitioner herein was the fourth defendant in the said suit. He suffered a decree for payment of Rs.14,584.75/- with subsequent interest at 9% p.a., The decree holder levied execution in E.P.No.124 of 1979 seeking sale of the properties belonging to the judgment-debtor. Eventually, the property was sold on 21.03.1980 and the sale was confirmed on 16.06.1980. Thereafter, there was no steps taken by the judgment-debtor to set aside the sale on any of the grounds. Nearly after 29 years, in the year 2009, the petitioner filed an application in E.A.No.62 of 2009 seeking to set aside the sale contending that the decree-holder himself has purchased the property through the auction purchaser and therefore, the sale is in violation of Order 21 Rule 72(1) of C.P.C. In support of his contention, the petitioner sought to rely upon certain deposition of Gopalakrishnan, auction purchaser, made in O.S.No.671 of 1980, wherein, according to the petitioner, the auction purchaser Gopalakrishnan has accepted that he had purchased the property on behalf of the decree holder. This petition was resisted by the respondents, who were the legal heirs of the auction purchaser and subsequent purchasers from the auction purchasers. The respondents would contend that the petition is hopelessly barred by limitation. The claim that the Gopalakrishnan had purchased the property on behalf of the decree holder was also denied.

2. The trial Court, upon a consideration of the evidence on record, concluded that the petition is hopelessly barred by limitation. It was also found that the grounds raised in the petition were not only relating to non-compliance with the order 21 Rule 72(1) of C.P.C., but also other grounds available to the judgment debtor under Order 21 Rule 90 C.P.C. It was concluded that there is absolutely no evidence to show that the Gopalakrishnan had purchased the property on behalf of the decree holder. Aggrieved, the petitioner filed an appeal in C.M.A.No.1 of 2012. In the appellate Court, an attempt was made to produce the deposition of Gopalakrishnan in O.S.No.671 of 1980, but the same was rejected. The Lower appellate Court has also concurred with the findings of the trial Court and dismissed appeal. Aggrieved, the petitioner has come up by way of the Civil Revision Petition.

3. Mr.K.P.Narayanakumar, learned counsel appearing for the petitioner would contend that the Courts below had erred in dismissing the application on the ground that the petitioner has not established that the property was purchased by Gopalakrishnan on behalf of the decree holder P.Soundarapandiyan. Drawing my attention to the deposition of Gopalakrishnan in O.S.No.671 of 1980.

Mr.K.P.Narayana Kumar, learned counsel would submit that the Gopalakrishnan has infact admitted that he had purchased the property on behalf of the decree holder Soundarapandiyan.

4. Contending contra, Mr.R.Vijayakumar, learned counsel appearing for the respondents 8 & 9 would submit that the petition is hopelessly barred by limitation and it ought to have been rejected at the threshold. Pointing out that the sale was confirmed as early as on 16.06.1980. Mr.R.Vijayakumar, learned counsel for the respondents would submit that this petition ought to have been filed within 60 days of the confirmation of the sale as per Article 127 of the Limitation Act. Article 127 of the Limitation Act reads as follows:-

Description of application	Period of limitation	Time from which period begins to run
127.To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	[Sixty] days	The date of the sale.

It is crystal clear that the application is not made within the time as per Article 127 of the Limitation Act, 1963.

5. Mr.K.P.Narayanakumar, learned counsel for the petitioner would invite the attention of this Court to the judgment of ***K.Suresh Babu vs. K.Balasubramaniam reported in AIR 1981 Mad 1*** in support of his submission that the provision of Order 21 Rule 72(1) C.P.C., are independent of the other provisions under Order 21 to set aside the sale and no further proof of damage or substantial injury is required violation of Order 21 Rule 72(1) C.P.C., is made out. No doubt, the Hon'ble Full Bench had laid down the law to the effect that once the sale is in violation of order 21 Rule 72(1), the same has to be set aside. But nowhere, the Full Bench has held that such application could be filed after 21 years after the sale. The point of limitation was neither raised nor argued before the Full Bench. Therefore, I do not think that the judgment of the Full Bench can be relied upon as a precedent to conclude Order 21 Rule 72(1) can be filed at any point of time. Order 21 Rule 72(3) reads as follows:

> "(3)Where a decree-holder purchases by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale, and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending

it, shall be paid by the decree-holder."

6. A reading of Sub-Rule 3 of Rule 72 of Order 21 makes it clear that a sale in violation of Order 21 Rule 72(1) is voidable at the instance of the judgment-debtor or any other person whose interests are affected by the sale. It is not void. Sub Rule 3 enables the judgment debtor to set aside the sale on the ground of violation of Rule 72(1) of Order 21. Undoubtedly, the said application should also be filed within the time prescribed under Article 127 of the Limitation Act. Even assuming that Article 127 of Limitation Act does not apply (infact it is not so), then the residuary Article will be applicable. Even then an application to set aside the sale under Order 21 Rule 72(1) has to be filed within three years of the sale under Article 137 of the Limitation Act. As already pointed out, the present application has been filed nearly after 21 years after the sale.

7. Mr.K.P.Narayanakumar, learned counsel for the petitioner would submit that Section 17 of the Limitation Act would come to his aid. Section 17 has an effect of postponing the running of the period of limitation until the plaintiff or applicant has discovered the fraud or the mistake or both or with reasonable diligence would have discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. It is clear to my mind that Section 17 cannot be invoked by the petitioner. It is not the case of the petitioner that Gopalakrishnan has purchased the property on behalf of the decree-holder only in the year 2009. Even otherwise, the first proviso to Section 17 provides that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which, in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed. In the case on hand, atleast three sales have been effected after the purchase made by Gopalakrishnan. This plea was not raised before the Courts below, so as to enable the purchaser to show that he is a bonafide purchaser. I do not think that the petitioner could be allowed to rely on Section 17 for postponing the limitation which would have the direct effect on the subsequent purchaser.

8. I am, therefore, of the considered opinion that the application, looked at from any angle, is hopelessly barred by limitation and is liable to be rejected at the threshold itself. The Courts below while dismissing the application, have recorded the factual findings. The petitioner has not made out a case to conclude that the suit property was purchased by auction purchaser

Gopalakrishnan on behalf of the decree holder. I do not think those findings can be said to be materially irregular. Hence, these Civil Revision Petitions fail and they are accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge,
Nagercoil.

2.The Principal District Munsif,
Nagercoil

Copy to:
The Record Keeper, V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.T.SELVAKUMARAN, Advocate (SR-105818 & 105819[F] dated 19/12/2019)

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JMN(07.01.2020) 5P : 7C