



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (NPD) .No.2370 of 2018

and

C.M.P (MD) .No.10607 of 2018

Koodammal

: Petitioner

Vs.

A.Ramaiah

: Respondent

PRAYER: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure against the order and docket order dated 11.08.2017 made in E.P.No.37 of 2017 in O.S.No.28 of 2014 on the file of the District Judge, Tirunelveli.

For Petitioner

: Mr.P.Venkatesan

For Respondent

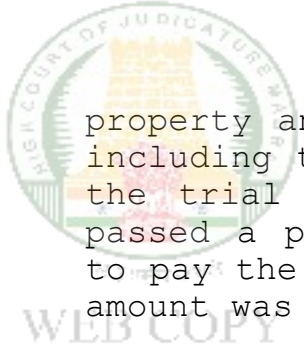
:Mr.M.Saravanan

ORDER

This Civil Revision Petition has been preferred against the order and docket order dated 11.08.2017 made in E.P.No.37 of 2017 in O.S.No.28 of 2014 on the file of the District Judge, Tirunelveli.

2. In the grounds of revision, the learned counsel for the petitioner would submit that while passing the docket order by the learned Principal District Judge, Tirunelveli is not proper and has failed to look out the facts and the proper procedure has not been followed by the said Court. Further grievance raised by the petitioner is that the execution petition was filed for recovering a sum of Rs.12,52,000/- and in the sale proclamation also the said amount has been stated. Whereas the mortgage property value was fixed by the executing Court for a sum of Rs.6,00,000/- and going to be sale on 26.10.2018. But, the market value of the mortgage property is more than 25,00,000/-.

3. On hearing of both side and on perusal of records, it is observed that the suit in O.S.No.28 of 2014 was filed by the respondent for directing the petitioner to pay a sum of Rs.12,52,000/- with subsequent interest at 24% per annum for the date of plaint till date of payment and to pass a preliminary decree directing the petitioner to pay the sum of Rs.12,52,000/0 with interest thereon at 24% per annum within a date to be fixed by the Court, in default to pass a final decree for sale of the schedule



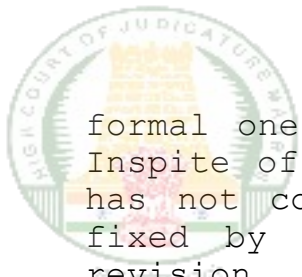
property and to adjust the sale proceeds towards the decree amount including the charges and costs incurred thereto. In the said suit, the trial after observing the oral and documentary evidence, has passed a preliminary decree on 27.01.2016 directing the petitioner to pay the decretal amount within the period of 3 months. Since no amount was paid, final decree was also passed on 01.02.2017.

4.Subsequent to the above, E.P. No.37 of 2017 was filed by the respondent herein for recovery of the said amount by way of sale of mortgage property that is set out in the schedule. The Executing Court has proceeded accordingly by issuing notice to the petitioner herein and the service was also effected on 09.10.2017. The notice was served, but the petitioner herein has refused to receive the same and the said postal cover was also returned and hence, the petitioner herein called absent and set exparte on 09.10.2017. The value of the property and sale papers were also tested for assessment. After filing the sale papers, once again the petitioner herein appeared before the Court and prays some more time and hence, once again the matter was posted in the stage of sale notice. The petitioner herein has also filed his objection by way of execution application. The objection filed by the petitioner was perused and the same was rejected and the price was also fixed at Rs.6,00,000/- and the sale was ordered.

5.The learned counsel for the petitioner contended that the value of the mortgage property is more than Rs.25,00,000/- worth, whereas the Court fixed at Rs.6,00,000 is not justifiable. It is seen that the petitioner filed her objection, but she has not stated anything about the proper value of the property by way of comparison or by way of offer or what is the market value that was subsisting on the date of fixing the rate. But, the petitioner has simply objected and has not stated anything about the price fixed by the Executing Court. Hence, the petitioner sought that the order of the Executing Court cannot be executed. Everything was very much observed by the the Executing Court and the objection was also rejected.

6.Today also the learned counsel for the petitioner has not stated anything about how he comes to the conclusion that the property worth about Rs.25/- lakhs and it has been fixed by the Executing Court as Rs.6,00,000/- and what is the appropriate amount that the property will be actually fetched. These are all not placed before this Court by the petitioner by way of reliability of documents. The petitioner has not made a representation regarding repayment of the amount.

7.Per contra, the learned counsel for the respondent would contend that by way of proper procedure and after giving sufficient opportunity to the petitioner only, the value of the said property was fixed by the Executing Court. But, her mere objection is only a



formal one and that too was also rejected by the Executing Court. In spite of opportunity was given to the petitioner, the petitioner has not come forward with any proper objection against the value fixed by the Executing Court. Hence, he prays to dismiss this revision.

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8. I have heard the learned counsel appearing on either side.

9. On perusal of documentary evidence and the submissions made by both counsel, this Court is of the view that the value fixed by the Executing Court is reasonable and this Court does not find any reason to interfere with the order passed by the Executing Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

msa

To

The Principal District Judge,
Tirunelveli

COPY TO:

The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai. 2 COPIES
+1 CC to Mr. M. SARAVANAN, Advocate SR.No. 52195.

C.R.P. (MD) (NPD) .No.2370 of 2018
and

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