



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD).No.2719 of 2018(NPD)

and

C.M.P.(MD).No.11898 of 2018

R.Murugan

... Petitioner/Petitioner/3rd party

Vs.

1.Balammal

... Respondent/Respondent/Respondent

2.A.Nageswaran

... Respondent/Respondent/Petitioner

3.V.Ramar

... Respondent/Auction Purchaser

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order passed by the learned District Munsif, Theni, Theni District in E.A.No.77 of 2015 in E.P.No.46 of 2010, pending on the file of the learned District Munsif, Theni.

For Petitioner : No appearance

For R1 & R2 : No appearance

For R3 : Mr.P.T.S.Narendravasan

O R D E R

This Civil Revision Petition has been preferred against the order passed by the learned District Munsif, Theni, Theni District in E.A.No.77 of 2015 in E.P.No.46 of 2010, pending on the file of the learned District Munsif, Theni.

2.Though at the instance of the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent, this matter was fixed to be taken up for hearing at 11.30 a.m., on 29.04.2019, today when the matter is taken up for hearing, there is no representation on behalf of the petitioner as well as the learned counsel appearing for the first and the second respondents. However, the learned counsel appearing for the third respondent is present. Hence, this Court is inclined to pass the order on merits, since it was very much interested by both the counsel for early disposal.

3.The revision petitioner, who is a third party, has filed E.A.No.77 of 2015 to set aside the decree passed in O.S.No.711 of 2004 and to declare as null and void.

4.In the E.A., the petitioner/third party contented that the revision petitioner came to know that the plaintiff has filed a suit before the learned District Munsif, Periyakulam, on the basis of an unregistered mortgage, claiming the relief that the respondents/defendants have directed to pay a sum of Rs.87,600/- which is being the interest and principal on the sum of Rs.60,000/- from the date of filing of the said suit with subsequent



interest at the rate of 1% for the said sum. It is further contended that the first respondent/defendant, who is the mother of the petitioner/third party, is an ill-literate person and the petitioner/third party is living with his wife and children in his own residential house situated at Door NO.6, Mutton Stall North Main Street, Alli Nagaram, Theni, Theni District, which is in the name of his mother. It is further contended that the age of the petitioner's mother is 80 years and the said residential house is entrusted for the petitioner and his two elder brothers viz., Subramani and Periyasamy and they are in peaceful possession and enjoyment of the suit property for the past 25 years. In such circumstances, recently he got shock and surprise that the Court ameen came to the suit property and enquired about the respondents and during the enquiry, the petitioner/third party came to know that the Court proceedings are pending between the first respondent/defendant and the second respondent/plaintiff, for which, the defendant had been cheated by the plaintiff, since he was cited as a witness in the document which is a blank paper obtained from the defendant to a small amount of Rs.20,000/- The plaintiff has no merit in the case and also suppressed the facts that the said Balammal, is in possession of the property.

5.The grievance of the petitioner is that the real fact has been purposely suppressed by the respondents and both the respondents have colluded with each other to cheat the third party/petitioner, who is in possession and enjoyment of the suit property. Hence, the petitioner is very much aggrieved that the decree obtained by the respondent is absolutely invalid, based on the suppression of facts. Hence, the petitioner sought for setting aside the decree as null and void.

6.The respondent/defendant has filed her counter statement stating that she vehemently objected the facts stated in the said petition. The respondent contended that in O.S.No.711 of 2008, merely 30 times summons were issued to the defendant and the defendant has also appeared through her counsel and inspite of sufficient opportunities and time was given by the Court, the defendant did not file written statement on 07.01.2009, 06.02.2009 and 13.03.2009. Since no counter has been filed on behalf of the defendant, the said petition has been allowed and hence, the property was brought on sale and the third defendant is an auction purchaser and has purchased the same. In E.A.No.7 of 2012 the sale was confirmed and sale certificate was also issued on 08.10.2012 and through out the proceedings, the revision petitioner has not made any objection and at a very belated stage, she has filed her objection. Now, E.P is pending for handing over the possession of the property with the assistance of Police and Village Administrative Officer.

7.The Execution Court had observed the contention raised by both sides and also observed the entire proceedings and gave a



finding that the property now belonged to the first respondent, the petitioner and his two brothers for nearly 25 years and the same was also partitioned among them and the same was not contested by the third party, who is the revision petitioner herein and dismissed the E.A. Aggrieved against the said order, the present Civil Revision Petition has been filed.

8. Since the date of passing the preliminary decree as well as the final decree and also the execution proceedings, though the respondent viz., Balammal appeared, she has not filed counter and the sale was registered and now, it is pending only for taking possession. If at all the petitioner has grievance, he ought to have appeared before the trial Court at the earliest point of time and even in spite of appearing before the Execution Court, there is no counter objection made by the respondent. Since the third respondent, who is the bonafide auction purchaser and who is waiting for taking possession of the suit property, the civil revision petition is disposed of only after hearing the learned counsel appearing for the third respondent.

9. It is seen from the records that the filing of E.A at the verge of the proceedings, which shows that the intention of the petitioner is only to prevent the third respondent from obtaining the fruits of decree and there is no merit in the Civil Revision Petition. Hence, the order of the trial Court deserve no interference.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Munsif,
Theni, Theni District.

Copy to

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

1 CC to M/s.PT.S.NARENDRAVASAN, Advocate SR-64337.

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