



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD)No.1550 of 2019

and

C.M.P. (MD)No.8214 of 2019

T.Dennis

...Petitioner/Petitioner/
3rd party

Vs.

1.Balachandran

... 1st Respondent / decree holder/
petitioner-plaintiff

2.Sujatha

...2nd respondent / 2nd respondent /
2nd defendant

PRAYER: Civil Revision Petition is filed, under Under Article 227 of Civil Procedure Code, to set aside the fair and decretal order dated 23.03.2019 passed in C.F.No.307 in E.P.NO.15 of 2011 in O.S.No.07 of 2006 on the file of the Subordinate Court, Kuzhithurai.

For Petitioner : Mr.M.P.Senthil

O R D E R

This Civil Revision Petition is filed against the fair and decretal order, dated 23.03.2019, passed in C.F.No.307 in E.P.NO.15 of 2011 in O.S.No.07 of 2006, by the learned Subordinate Judge, Kuzhithurai.

2.The relevant portion of the order passed by the Court below is as follows:-

"This Court in the E.A.No.222 of 2017 filed by the petitioner has categorically held that this petitioner purchased the attached property after knowing the factum of attachment with malafide intention by simply changing the survey number. This Court has also held that as per Sec.67 of CPC the sale deed in favour of petitioner is an invalid document. So through the said sale deed petitioner could not again claim right over EP schedule property and file this petition without challenging the aforesaid order. This



petition simply shows that petitioner even after the finding of this Court that he has 'fraudulently created' a sale deed in his name after attachment again presses the same sale deed in to service without any fear. So this petition is rejected by holding that petitioner has no cause of action to file this petition and this petition is nothing but an abuse of process of Court."

3.The learned counsel for the revision petitioner would contend that originally the defendant was the owner of the entire 22 cents of the subject matter property. The plaintiff has filed a suit for recovery of money for a sum of Rs.1,15,000/- and that the Court below decreed for a sum of Rs.2,04,735/- by Judgment and decree dated 07.12.2009. Now, the decree holder has filed Execution Petition in E.P.No.15 of 2011 for recovery of Rs.2,04,735/- with interest. He would further contend that even along with interest, it will not be more than Rs.4 lakhs. Now, the property worth is about Rs.37,30,000/- as stated by the defendant in the cross examination. The learned counsel also submitted that they have admitted that when the attachment was in force he has purchased the property to an extent of 11.60 cents. Now, after deducting the said 11.60 cents, the balance 10.40 cents are available and it has been demarcated separately. Now, if the said 10.40 cents of the Judgment debtor is auctioned, it will meet out the entire claim of the decree holder. Therefore, he filed the said application. However, the same was dismissed due to the reason that the revision petitioner's objection was rejected by the trial Court.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.Though the revision petitioner has purchased the property, which was attached by the Court in the year 2004 to an extent of 11.60 cents, in order to meet out the claim of the decree holder, if the Court is inclined to pass an order for sale of the property to an extent of 10.40 cents, which is presently owned by the Judgment debtor, it will fulfil the entire claim of the petitioner. Further the said property is worth about more than Rs.15 lakhs.

6.The learned counsel for the revision petitioner, by citing the Judgment of the Hon'ble Supreme Court in **SAI ENTERPRISES v. BHIMRED LAXMAIAH** reported in **2007(3)L.W.20**, would contend that the provision in Order XXI Rule 64 of the Code, contains some significant words, they are, 'necessary to satisfy the decree' which means, the Executing Court can decide for the purpose of fulfilment of the decree that if any part of the properties is enough out of the attached property, the Court below can pass an order for the sale of the part of the property. The relevant portion of the said Judgment reads as follows:-



"7.However, the grievance of the appellant so far non-compliance with the requirements of Order XXI Rule 64 of the Code is on sound footing.

8.Order XXI Rule 64 reads as follows:

"64. Power to order property attached to be sold and proceeds to be paid to person entitled- Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof, as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

The provision contains some significant words. They are "necessary to satisfy the decree". Use of the said expression clearly indicates the legislative intent that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. (See *Takkaseela Pedda Subba Reddi v Pujari Padmavathamma* (AIR 1977 SC 1789). In all execution proceedings, Court has to first decide whether it is necessary to bring the entire property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small the Court must bring only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion but an obligation imposed on the Court. The sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. (See: *Ambati Narasayya v. M. Subba Rao and Anr.* 1989 Suppl. (2) SCC 693). The duty cast upon the Court to sale only such portion or portion thereof as is necessary to satisfy the decree is a mandate of the legislature which cannot be ignored. Similar, view has been expressed in *S. Mariyappa (Dead) by LRs. And Ors. v. Siddappa and Anr.* (2005 (10) SCC 235). The position was also highlighted in *Balakrishnan v. Malaiyandi Konar* (2006 (3) SCC 49 = 2006 (4) L.W. 1029)."

7.In that view of the matter, this Court is of the opinion that since the present Execution Petition is filed for the claim of Rs.2 lakhs along with interest, even along with the interest it will not be more than Rs.4 lakhs, the property owned by the plaintiff/Judgment debtor is to an extent of 10.40 cents, which is demarcated separately and it is independently available for the sale. Under these circumstances, the Executing Court can pass an



order for sale of the property, if it feels that the amount will be realised out of the sale of the said property and if it will meet out the claim of the Judgment debtor, they can pass appropriate orders. However, such an order can be passed only if the present revision petitioner is permitted to be impleaded and to raise his objections. Therefore, it is appropriate to number the application filed by the petitioner and then only he can bring out all these facts to the Executing Court, so that the Executing Court can pass orders without affecting the interest of the revision petitioner as well as the decree holder. Accordingly, the impugned order dated 23.03.2019 passed in C.F.No.307 in E.P.NO.15 of 2011 in O.S.No.07 of 2006 by the learned Subordinate Judge, Kuzhithurai in is set aside and this Court directed the Executing Court to number the application.

8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

The Sub Judge,
Kuzhithurai.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-86742[F] dated 16/09/2019)

**Order made in
C.R.P (MD)No.1550 of 2019
12.09.2019**

rj2

JM/19.09.2019/4P/3C