

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2020

PRONOUNCED ON : 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.3853 of 2011

and

M.P.No.1 of 2011

1.Velmurugan	...1 st Petitioner/ Defendant
2.Sundaravel	
3.Kandavel	
4.Thilagavathi	...Petitioners
Vs.	
1.T.Arumugha Mudaliar (Died)	...1 st Respondent/ Plaintiff
2.G.Arumugha Mudaliar	
3.A.Ponnammal	
4.TMT.G.Baby	
5.A.Shanmugam	
6.A.Elumalal	... Respondents

[Respondents 3 to 6 brought on record as legal representatives of the deceased first respondent viz, T.Arumugha Mudaliar vide Court order dated 06.06.2019 made in CMP.No.9410, 9412 and 9415 of 2019 in CRP(NPD).No.3853 of 2011]

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order in E.A.No.314 of 2008 in E.P.No.122 of 2007 in O.S.No.78 of 2001, on the file of the learned Subordinate Judge, Kancheepuram, dated 21.12.2009.

For Petitioners : M/s.A.Sumathy
1st Respondent : Died
For R2 to R6 : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Kancheepuram, in E.A.No.314 of 2008 in E.P.No.122 of 2007 in O.S.No.78 of 2001, dated 21.12.2009.

2 Defendant in the suit O.S.No.78 of 2001 is the revision petitioner herein.

3 Brief facts of the case are as follows:

(i) The first respondent herein has filed a suit in O.S.No.78 of 2001, before the learned Subordinate Judge, Kancheepuram, for recovery of money due on the mortgage and the said suit was decreed on 08.07.2005. Subsequently, Execution Petition had been filed in E.P.No.122 of 2007 and sale proclamation was effected and public auction was fixed and the sale was conducted.

(ii) Thereafter, an application was filed in EA.No.314 of 2008, before the learned Subordinate Judge, by the revision

petitioners under Order 21 Rule 90 CPC, to set aside the sale held on 23.06.2008, on the ground of fraud and material irregularity and the same was dismissed. Thereafter, a memo has been filed stating that the revision petitioners 3 & 4, who were minors at the time of institution of the suit, have become majors and the application filed for setting aside the Court auction sale held on 23.06.008 on a sum of Rs. 4,04,000/-. The memo was calculated by the Execution Court and the same was effected and in the sale, the second respondent has become the successful purchaser and hence, the petition was filed to set aside the sale on the ground that

- (i) rejection of the memo is not valid in law,
- (ii) sale proclamation was not properly published in the municipality
- (iii) the upset price fixed by the Ameen at the time of the proclamation is too low.

As against the order passed in the I.A.No.314 of 2008, the revision petitioner have preferred this Civil Revision Petition before this Court.

4 Heard both the learned counsel and perused the materials placed on record.

5 The learned counsel for the petitioner would submit that without considering the memo regarding the minority or majority, the Court has proceeded to conduct the Court auction sale.

6 In the counter affidavit, it is stated that as per the decree, third revision petitioner was aged about ten years and the fourth revision petitioner was aged about eight years as on 2001 and therefore, at the time of the sale, the revision petitioners 3 & 4 cannot be the majors. Mere filing of a memo will not absolve the duty of the petitioners to prove the age. The memo of date of birth was given and the same was disputed and the petition was filed only to drag on the proceedings.

7 On a perusal of the records, it appears that the sale proclamation was duly published in the municipality and there was no evidence to support the contention of the learned counsel for the petitioners that the same was not at all published in the Municipality. Therefore, on this ground also, the sale was not affected.

8 When the Court records were perused, it appears that the property was tested on 05.04.2008 and the test report discloses

the fact that the signature of the Judgment Debtor, defendants 1 and 2 was obtained by the Amin and they also knew the value fixed by the Amin at Rs.4,00,000/-. The judgment debtor has not made any objection to the value fixed by the Amin at the time of sale proclamation and he had the knowledge that his property was valued by the Amin at Rs.4,00,000/- and the sale has to be held on 23.06.2008. He has not filed any application before this Court not to conduct the sale as the value fixed by the amin is not correct and also the sale proclamation was not in accordance with law. The property has been sold at the first auction itself and it does not mean that the sale proclamation was not properly done or the property has been sold to a lowest price. The value was fixed by the Amin only in the presence of the plaintiff, defendants as well as the witnesses. Therefore, as contended by the petitioners, there was no material irregularity in the proclamation of sale and the sale on 23.06.2008 and therefore, there are no merits in the petition and the same is liable to be dismissed.

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9 Admittedly, a memo has been filed, saying that the revision petitioners 3 & 4 are attained majority and the Court has not considered the memo. However, a finding has been rendered that as per the final decree, the age of the third revision petitioner

would be 17 years and the fourth revision petitioner would be 15 years. Therefore, the memo was ignored by the petitioners as well as by the Court, as the memo was not supported by any documentary evidence to show that the age of the petitioners 3 and 4 was mentioned wrongly in the final decree itself. Therefore, there was no necessity to take steps to declare the second and third petitioners as majors and they were failed to take steps to declare the petitioners 3 and 4 as majors as per the memo filed by the petitioners on 28.04.2008 and it will never vitiate the execution proceedings.

10 Though, a memo was filed stating that two of the petitioners are attained majority, which was disputed and hence, he ought to have filed necessary documents to show the attainment of majority, the Trial Court has done a rough calculation based upon the age given in the final decree and held that there is no necessity to take steps to declare that the petitioners 3 and 4 as majors and even failure to take steps to declare petitioner 3 and 4 as a major as per the memo will never vitiate executing proceedings as the interest of the parties are duly represented by the guardian and also by the counsel appointed by such person.

11 In view of the fact that the sale proclamation was duly published in the municipality as evidenced from the Court records, the Trial Court has recorded the said finding and the same does not call for interference.

12 Next point for consideration is that whether the value fixed by the Amin at Rs.4,00,000/- is on the lesser side?

13 As observed earlier, it is a report, disclose the fact that the signature of the judgment debtor, defendants 1 and 2 was obtained by the amin and thus, the value fixed by the Amin at Rs.4,00,000/- was just and known to the judgment debtor/defendants 1 and 2. The judgment debtor has not made any objection at the time of sale proclamation and furthermore, he has not filed any objection to conduct the sale as per the value fixed by the Amin and he is simply disputing and in the absence of anything to say that the value as fixed by the Amin at Rs.4,00,000/-, is low, this Court is of the considered view that the value of the Amin is on the lesser side and such allegation is may be only to drag on the proceedings without any basis. Merely because, in the first auction itself, the property was sold does not lead to infer that sale proclamation was not properly done or the property was sold at a

lesser price and hence all the contentions raised by the learned counsel for the petitioner stands negated.

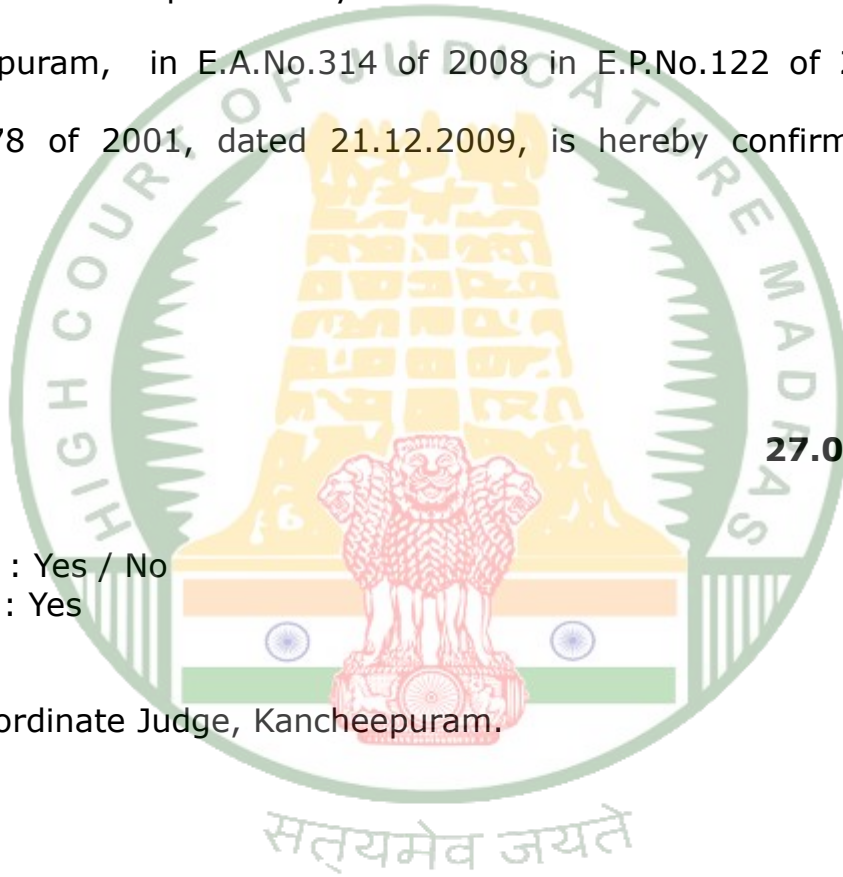
14 In the result, the Civil Revision Petition stands dismissed and the order passed by the learned Subordinate Judge, Kancheepuram, in E.A.No.314 of 2008 in E.P.No.122 of 2007 in O.S.No.78 of 2001, dated 21.12.2009, is hereby confirmed. No costs.

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Index : Yes / No
Internet : Yes

To
The Subordinate Judge, Kancheepuram.

27.02.2020



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RMT.TEEKAA RAMAN., J
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Pre-Delivery Judgment
in
CRP.(NPD).No.3853 of 2011

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