

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.02.2020

ORDER PRONOUNCED ON : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD) No.3381 of 2012

and

M.P.No.1 of 2012

1.Vanaja
2.Jaya
3.Sarasu

... Petitioners

...Versus...

M.Gunasekaran (Died)

1.Gopal

2.Ramasamy

Vasantha (Died)

3.Chinnapappa

4.Chandrasedkaran

5.Gopu

6.Gokila

7.Kandasamy

8.Kaliammal

9.K.Vishavanathan (died)

10.K.Nagan

11.K.Muthuraman

12.P.Krishnan (Died)

13.Illangovan

14.Mrs.Anadhi

15.Mr.Naveen

16.Mrs.Paveya

17.Janagi

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18.Mr.Ramesh

19.Lavainya

20.Bhvana

[RR14 to 16 brought on record as LR's of the deceased R9
viz.,K.Vishvanathan vide Court order dated 03.02.2017 made
in C.M.Ps.1083 to 1088/2017 in C.R.P.No.3381/2012(MVMJ)]

RR17 to 20 brought on record as LR's of the deceased R12 viz.,
P.Krishnan vide Court order dated 03.02.2017 made in
C.M.Ps.1083 to 1088/2017 in C.R.P.No.3381/2012 (MVMJ)]

... Respondents

PRAYER:This Civil Revision Petition has been filed under Article 227 of the
Constitution of India, against the fair and decreetal order of the learned
Subordinate Judge of Harur, dated 31.07.2012 in REA.No.35 of 2012 in
REP.No.9 of 2008 in O.S.No.81 of 1997.

For Petitioner :: Mr.A.Ilaya Perumal

For R1 :: Mr.D.Thirumoorthy

For R2&3,9to11 :: No appearance

For R13 :: Mr.P.Valliappan

ORDER

The third party/claim petitioner in E.P proceedings, is the
revision petitioner herein.

2. The respondents 2,3,5 and 8 are the decree-holders. While, the respondents 7, 9 to 14 are Judgment Debtors. The 15th respondent is the auction purchaser.

3. One Gunasekaran (since dead) filed a suit in O.S.No.81 of 1997 before the Sub-Court, Dharmapuri for recovery of money due on the two suit pro-notes one for Rs.10,000/- and another for Rs.50,000/-. The suit was decreed for Rs.10,417/- and Rs.51,625/- respectively.

4. Pending suit, he filed an I.A. seeking an order of attachment before the judgment, which was granted on 04.08.1997 and the same was effected before the Sub-Registrar office. Subsequently, on 18.10.2000, attachment was made absolute and after obtaining the decree, the decree holder filed R.E.P.9 of 2008 in the suit and it was subject to Court auction which was held on 16.06.2011 and on 26.08.2011, the Court sale was confirmed in favour of R15 respondent. Subsequently, the sale certificate was issued on 26.09.2011. Thereafter, when the matter was posted for delivery, the petitioner herein filed R.E.A 35/12 objecting the delivery and to set aside the sale. The REA was filed on 16.06.2012 under Section 47 of C.P.C for setting aside the sale, but the same was dismissed and hence, the Civil Revision Petition.

5. The learned counsel for the petitioner submitted that since the subject matter of the property was sandwiched to his property, he is handing the property for better administration and he was ready and willing to pay the amount to the tune of Rs.4 lakhs. Though the money decree is Rs.86,443/–, even calculated the interest upto date, does not cross Rs.4 lakhs.

6. The learned counsel for the respondents refused to accept the same, since, he has taken the property in the Court auction as early as 2011.

7. On perusing the docket entries, I find that the sale in favour of the third party/claim petitioner by the judgment debtor was on 19.08.1997 by virtue of 3 sale deeds. Admittedly, an interim order of attachment was passed by the Civil Court during pendency of the suit which was 31.07.1987. The same has been effected in the Sub-Registrar office records on 04.08.1997 and thus, on the date of the sale in favour of the petitioner herein, namely 19.08.1997, there is a valid order of attachment by the civil Court and the same is duly reflected in the Sub-Registrar office records and its Encumbrance Certificate and thus, the petitioner has purchased the property having notice of order of attachment.

8. This petition is filed under Section 47 read with 151 of C.P.C challenging the Court auction sale held on 16.06.2011. The Court auction purchaser has stated that he has purchased the property by knowing fully about the order of attachment and hence, he can not challenge the court auction purchase.

9. After perusing the lower Court records, it is seen that 15th respondent herein is the Court auction purchaser and he had originally filed an application in R.E.A.22 of 2012 against the respondents 1 to 14 herein for delivery of possession of the petition property based upon the sale certificate. Neither the decree holder nor the judgment debtor has made any objection in this petition.

10. From the Encumbrance Certificate, the trial Court has held that the interim order of attachment passed by the Court was duly reflected in the Encumbrance Certificate and therefore, the trial Court has rightly held that the petitioner has purchased the property with the knowledge that the property is attached by the Court order. This petition is challenging the Court auction sale on the ground of irregularity for the same. The petition has to be filed within 60 days. The petition has been filed beyond 650 days. Besides the petitioner having purchased the

property knowing fully well about the order of attachment, cannot claim equity and hence, looking at from any angle, the order passed by the trial Court cannot be interfered with.

11. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.02.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

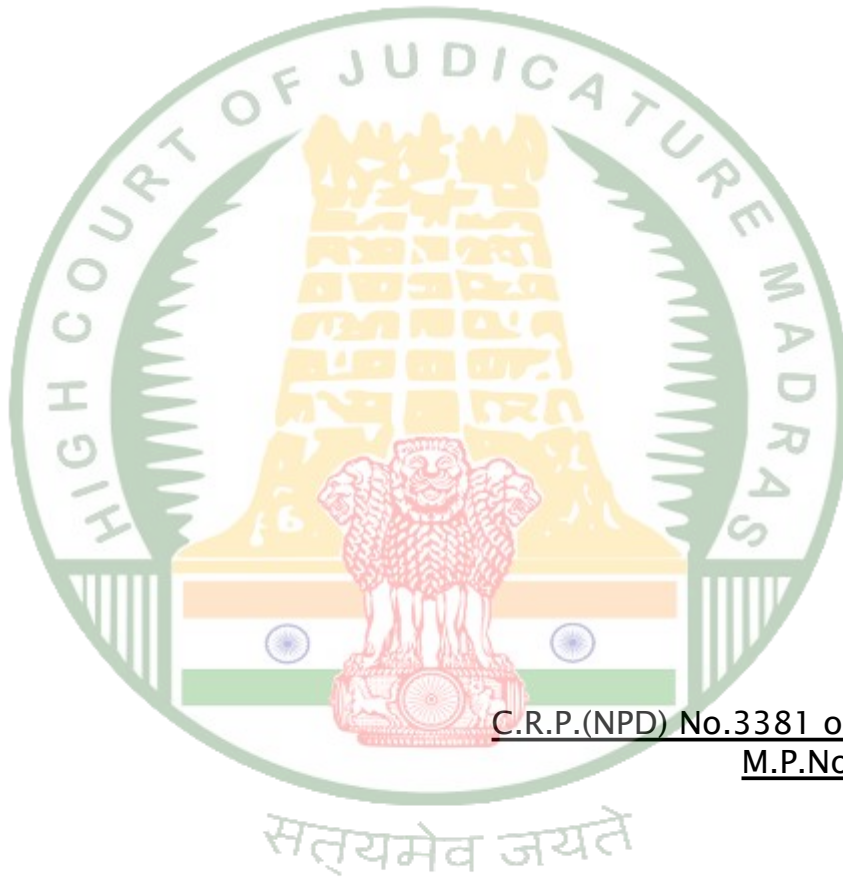
The Subordinate Judge of Harur

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C.R.P.(NPD) No.3381 of 2012

RMT.TEEKAA RAMAN,J.,

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order in
C.R.P.(NPD) No.3381 of 2012 and
M.P.No.1 of 2012

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