

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2020

PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).Nos.3020 & 3021 of 2013
and
M.P.No.1 of 2013

Santhi

...Petitioner/
Third party
in both CRPs

Vs.

1.Kannappa Udayar
2.Shanmuga Mudaliar
3.Namasivayam
4.Palani

...Respondents/
Judgment Debtors
in both CRPs

COMMOM PRAYER: These Civil Revision Petitions have been filed under Article 227 of the Constitution of India to set aside the orders of return dated 19.06.2013 & 02.07.2013, made in E.A.No. nil of 2013 in E.A.No.205 of 2008 in E.P.No.417 of 2006 in O.S.No.350 of 1998, on the file of the learned Principal District Munsif, Tiruvannamalai and direct the learned Principal District Munsif, Tiruvannamalai to number the EA and decide the same on merits.

For Petitioner
in both CRPs : Mr.T.Dhanyakumar

For R1 and R4
in both CRPs : Mr.R.Sathish Kumar

For R2
in both CRPs : K.Velankanni

For R3
in both CRPs : No appearance

ORDER

The CRP.No.3020 of 2013 is directed against the order of return dated 19.06.2013, made by the Execution Court, wherein, the Execution Court has held that petition is not maintainable. Another CRP.No.3021 of 2013 is directed against the order of return dated 02.07.2013, made by the Execution Court, wherein, the Executing Court has held that petition is not maintainable.

2 Third party to the execution proceeding is the revision petitioner in both the cases.

3 The learned counsel for the petitioner would submit that the revision petitioner viz., S.K.Santhi, has filed O.S.No.291 of 2012, before the learned Principal District Munsif, Tiruvannamalai, for permanent injunction against the fourth respondent herein and the said suit was decreed on 20.02.2013 and there was an injunction decree against the fourth defendant from interfering with peaceful possession and enjoyment of the suit properties.

4 Further, the learned counsel for the petitioner would submit that the learned Judge has also failed to note that the revision petitioner has filed O.S.No.139 of 2013, before the learned Principal District Munsif, Tiruvannamalai, for declaration and for injunction against the fourth respondent and the first respondent herein and the same was pending disposal. The proceedings in O.S.No.139 of 2013 was mentioned though an application in E.A.No.194 of 2012, which was filed by the fourth respondent herein under Order XXI, Rule 95 CPC.

5 The petitioner has filed an execution application, alleging that the revision petitioner is the absolute owner of the suit properties and she has purchased the said property by registered Sale Deed, dated 30.04.2008 in document No.1899 of 2008, in the Office of the Sub Registrar of Tiruvannamalai from the third respondent herein viz., A.Namachivayam, who in turn purchased the said suit properties by a registered Sale Deed dated 15.02.2007 in document No.690 of 2007 in the Office of the Sub Registrar, Tiruvannamalai, from the second respondent herein viz., Shanmuga Mudaliar.

6 Admittedly, it is seen from the records, that the first respondent herein viz., Kannappa Udayar, has filed a suit in O.S.No.350 of 1998, for recovery of money at Rs.82,157/- on the basis of pro-note executed by the second respondent herein and he has obtained an ex-parte decree against the second respondent herein on 28.04.1999. To realize the decree amount the first respondent herein has filed an Execution Petition in E.P.No.417 of 2006. In the said EP, he has sought for attachment under Order 21 Rule 54 of CPC and after attachment, to sell the property under Order 21 Rule 66 of CPC and the Court has made an order of attachment on 11.10.2007 and the disputed properties were attached in E.P.No.417 of 2006, on 05.11.2007 and intimation was served on the Sub Registrar Office on 05.11.2007.

7 Furthermore, the case of the petitioner herein is that during the pendency of the execution proceedings, the second respondent herein has sold the property in favour of the third respondent on 15.02.2007 and thereafter, the third respondent herein has sold the property in favour of the revision petitioner on 30.04.2008. Based upon the said Sale Deed, revision petitioner has filed a suit in O.S.No.291 of 2012, before the learned Principal District Munsif, Tiruvannamalai, against the fourth respondent viz.,

Palani and has also filed another suit in O.S.No.139 of 2003 for declaration and injunction against the first respondent herein and the fourth respondent herein. Hence, he has filed an application in EA.No.205 of 2008 in E.P.No.417 of 2006 and the same was returned with endorsement that the Court sale was effected as early as on 18.10.2011 and hence, petition challenging the Court sale is not maintainable and again he has represented the same and again the same was returned on 02.07.2013 stating that delivery was ordered on 10.04.2013 and possession was given as per the Sale Certificate on 05.06.2013 and delivery was recorded on 02.07.2013. Challenging this two return endorsements dated 19.06.2013 & 02.07.2013, these two Civil Revision Petitions have been preferred by the revision petitioner before this Court.

8 Heard the learned counsel for the petitioner and the learned counsel for the respondents 1, 2 & 3 and perused the materials placed on record.

9 From a perusal of the records, it appears that EP was filed on 06.09.2006 itself, in E.P.No.417 of 2006, for execution of the money decree. During the pendency of the said EP, the second respondent/judgment debtor has sold the property in favour of the

third respondent herein, on 15.02.2007. Admittedly, during the pendency of execution proceedings in EP.No.471 of 2006, an order of attachment was made on 11.10.2007 and the same was incorporated in the records of Sub Registrar Office on 05.11.2007. The third respondent herein has sold the property to the fourth respondent herein.

10 Thus, this Court finds that all the transactions are after filing of the execution proceedings. In other words, pending lis. It is also seen that third respondent, who has purchased the property from judgment debtor/second respondent herein on 15.02.2007, has filed an application in EA.No.205 of 2008 and the same has been disposed of and an order of attachment has been made and whether any appeal has been filed or not, has not been placed before this Court.

11 It is also seen from the endorsement that the Court sale was conducted on 03.08.2011, the sale was confirmed on 18.10.2011 and sale certificate was issued on 18.01.2002. Thereafter, the auction purchaser has filed an execution application for delivery and the same was allowed in EA.No.194 of 2012, in which possession was given on 05.06.2013 and the delivery was

recorded on 02.07.2013 and EP was terminated since, the revision petitioner has purchased the property on 30.04.2008. she again claim application under the above said provisions since, the same is barred under order 21 Rule 102 CPC. Hence, the endorsement made by the Trial Court is sustained and both the CPRs are dismissed.

12 In the result, these Civil Revision Petitions are dismissed and the order passed by the learned Principal District Munsif, Tiruvannamalai, in E.A.No. of 2013 in E.A.No.205 of 2008 in E.P.No.417 of 2006 in O.S.No.350 of 1998, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2020

dua
Index : Yes / No
Internet : Yes

To
The Principal District Munsif,
Tiruvannamalai.

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CRP.(NPD).Nos.3020 & 3021 of 2013
and M.P.No.1 of 2013

RMT.TEEKAA RAMAN., J

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Pre-Delivery Order
in
CRP.(NPD).Nos.3020 & 3021 of 2013

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