

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

C O R A M

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

C.R.P.(NPD).No.3740 of 2016

and C.M.P.No.19026 of 2016

1.R.M.G.Mothi

2.M.Ashrafjohn

...Petitioners

Vs

Rajesh

...Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the **Docket order dated 10.11.2016** made in **E.P.No.103 of 2015 in O.S.No.119 of 2010** on the file of the **Principal Subordinate Court, Thiruvannamalai.**

For Petitioners : Mr.T.Dhanasekaran

For Respondent : Mr.M.Venkadeshn

ORDER

This Civil Revision Petition has been filed challenging the Docket order dated 10.11.2016 made in E.P.No.103 of 2015 in O.S.No.119 of 2010 on the file of the Principal Subordinate Court, Thiruvannamalai.

2. The Execution Petition in E.P.No.103 of 2015 has been filed under Order XXI Rule 22, 54 and 66 to execute the decree passed in O.S.No.119 of 2010, confirmed in A.S.No.19 of 2012, by attaching the schedule mentioned property, and to bring it for public auction. It is seen that, the money due on the date of filing of the Execution Petition, was approximately a sum of Rs.13,00,000/- with subsequent interest.

3. Learned counsel for the Petitioners contended that, an Agreement was entered on 26.07.2004 and the Plaintiff has paid a sum of Rs.5,75,000/- and the balance sum of Rs.25,000/- was due and payable by the Plaintiff.

4. The Suit in O.S.No.119 of 2010 was filed for specific performance with alternate prayer. The Court below held that, the Suit for specific performance could not be allowed and directed the Defendants therein to refund a sum of **Rs.3,75,000/- together with interest**, to the Plaintiff. The alternate prayer was decreed by the Court below and the same was confirmed by the lower Appellate Court, viz. District Court, Thiruvannamalai in A.S.No 19 of 2012.

5. The only ground of attack by the learned counsel for the Petitioners is that, the lower Appellate Court ought not to have allowed the attachment of a different property, than what is mentioned in the suit prayer. He went on to contend that, if the suit property does not fetch any amount thereafter, it is open to the Respondents herein to attach any other property of the Petitioners herein.

6. This Court is not inclined to accept the said contention of the learned counsel for the Petitioners, as it runs counter to the provisions of the Civil Procedure Code, more particularly under Order XXI Rule 30 C.P.C., which is extracted below:

Mode of execution :

30. Decree for payment of money—Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

7. Once a decree is granted, even if it is a money decree, it is open to the Respondent herein to attach the very same property mentioned in the Suit or any other property of the Petitioners herein. Having failed in the Suit, the

Petitioners cannot dictate terms that, the property, only according to his priority be attached, and that, the Respondent has no choice to select any one of the properties of the Petitioners herein, and bring up the same for sale.

8. To substantiate his stand, learned counsel for the Petitioners has relied on a Division Bench decision of this Court in the case of ***Shantilal Kothari vs Sathrasala Venkatram (died) Sathrasala Sarathbabu*** reported in **2020 (1) L.W. 561**. Relevant portion of the said judgment is extracted hereunder:

“19. It is settled proposition of law that the Executing Court cannot go beyond the decree and the Executing Court cannot be a Court of Appeal to reverse the decree. The Executing Court cannot find fault with the judgment or any question of law or fact. The Executing Court cannot sit in appeal over the ex-parte judgment of the learned Single Judge, which had been confirmed by the Supreme Court. Now the various contentions put-forth under Section 47 CPC, have already been raised by the appellant by way of defence before the learned Single Judge as well as in the application filed by the appellant to set aside the ex-parte decree as well as before the Division Bench and finally, the findings of the learned Single Judge were confirmed by the Supreme Court.”

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9. The preposition laid down in the decision cited supra, cannot be read in isolation without reference to **Order XXI Rule 30 C.P.C.**, which is

extracted supra. Hence, this Court is of the view that, the order of the Court below is perfectly valid.

10. This Court holds that the suit property has to be attached and sold in public auction to realize the exact amount due as on date, and anyone, who is trying to prevent the auction sale, shall be proceeded in accordance with law by making necessary complaint to the appropriate authority.

11. It is made clear that, if any amount is deposited pursuant to the interim order of this Court, the same can be withdrawn by the Respondent herein and for the remaining amount, the schedule mentioned property can be brought to public auction.

12. **In fine, confirming the order passed by the Court below, the Civil Revision Petition stands dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2020

Index : Yes/No

Speaking order : Yes/No

(rst)

To:

The Principal Subordinate Court, Thiruvannamalai.

S.VAIDYANATHAN,J.
(rst)



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