



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P. (MD) Nos.1467 and 1468 of 2019

and

C.M.P. (MD) Nos.7770 and 9674 of 2019

WEB COPY

In both petitions:

Senthilkumar ... Revision Petitioner/Petitioner/
Respondent/Third Party

-Vs-

P.Ammaiyappan ...Respondent/Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petitions are filed under Section 115 of CPC against the fair and decreetal order dated 04.07.2019 passed in E.A.Nos.59 and 60 of 2018 in E.P.No. 98 of 2014 in O.S.No.36 of 2006 on the file of the Principal District Judge, Karur.

In both petitions:

For Petitioner : Mr.V.Balaaji

For Respondent : Mr.V.M.Balamohan Thambi

C O M M O N O R D E R

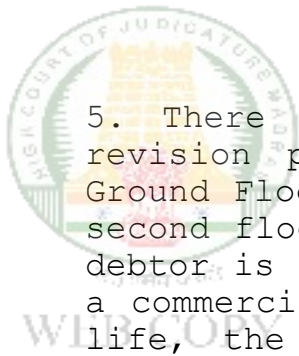
These revisions are preferred by the judgment debtor in O.S.No.36 of 2006 on the file of the Principal District Judge, Karur.

2. The suit is laid for recovery of a sum of Rs.10 lakhs with interest. The same has been decreed. Today, the decree debt is around Rs.14 lakhs. Based on the decree, the plaintiff / decree holder / respondent herein has laid execution petition in E.P.No. 98 of 2014 for a sale of the suit property.

2.1 The objection raised by the judgment debtor/revision petitioner is that only so much of property as is sufficient to satisfy the decree should be brought to sale.

3. In response, the learned counsel for the respondent submitted that the decree is a mortgage decree and not an ordinary money decree and the suit property was offered as security for mortgage deed. He added that the mortgage security is indivisible in character and therefore, the petitioner cannot insist that only the portion of the property must be brought to sale. In other words, his contention is that what is relevant for objecting sale of property in execution of a money decree may not be available when a decree for mortgage money is put in execution.

4. Heard both sides.



5. There is merit in the plea of the learned counsel for the revision petitioner. The mortgage-property comprises a basement, Ground Floor, First Floor and Second Floor. The first floor and the second floor constitute the residential areas, wherein the judgment debtor is residing, and the basement and the first floor constitute a commercial area. He submitted that just to protect the right to life, the Court may consider ordering sale of the basement and ground floor property, since the very character of the basement and ground floor is different from first floor and second floor.

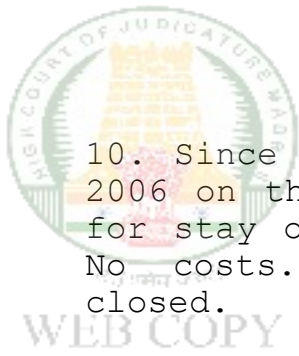
6. While a mortgage is indivisible, the Court have ample power to split it. Order 34 Rule 5(3) C.P.C reads:

Where payment in accordance with sub rule(1) has not been made, the court shall, on application made by the plaintiff in his behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule(1) of rule 4.

7. There is a situation when the value of the mortgage debt as on today is around Rs.14 lakhs, and the upset price fixed by the Court is Rs.45 lakhs, whereas according to revision petitioner/judgment debtor, it would fetch around Rs.80 lakhs. In other words, the upset price for the entire property as fixed by the Execution Court is about thrice the value of the debt. In fitness of things, the Execution Court should have passed a judicial decree directing that portion of the property as would be sufficient to satisfy the decree-debt.

8. Now even though a final decree has been passed for sale of the entire property, still it may have to be executed and in the spirit of Order 34 Rule 5(3) C.P.C. Hence, in the interest of justice, and also taking into consideration the right to dignify the life of the judgment debtor, this Court directs sale of the basement and the ground floor of the suit property at the first instance, without the decree holder / respondent losing his security over the first floor and the second floor. In the eventuality of the basement and ground floor fetching such necessary value to satisfy the decree debt, then his right to realize the decree debt from the first floor and the second floor will stand extinguished. If not, the decree holder / respondent is entitled to bring the remaining portion also for sale and the Execution Court shall approach the issue in the manner this Court has approached the issue.

9. In view of the above, the order passed in E.A.No.59 of 2018 in E.P.No. 98 of 2014 in O.S.No.36 of 2006 on the file of the Principal District Judge, Karur, is set aside. Accordingly, CRP(MD)No.1467 of 2019 is allowed and the Principal District Judge, Karur is directed to dispose of E.A.No.59 of 2018 in E.P.No.98 of 2014 within a period of six months from the date of receipt of a copy of this order.



10. Since E.A.No.60 of 2018 in E.P.No. 98 of 2014 in O.S.No.36 of 2006 on the file of the Principal District Judge, Karur, is filed for stay of further proceedings, CRP(MD)No.1468 of 2019 is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

Cm/ta

To
The Principal District Judge, Karur

+1 CC to M/s.V. BALAJI, Advocate (SR-23035[F] dated 27/11/2020)

+1 CC to M/s.V.M. BALAMOHAM THAMPI, Advocate (SR-23202[F] dated 27/11/2020)

C.R.P. (MD) Nos.1467 and 1468 of 2019
and
C.M.P. (MD) Nos.7770 and 9674 of 2019
23.11.2020

SJ(CO)
AP(21/12/2020) 3P 4C