



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.03.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) Nos.1844 and 1845 of 2019
and
C.M.P. (MD) Nos.9471 and 9474 of 2019

Munusamy .. Petitioner in both C.R.Ps./
Respondent/Respondent/Defendant
Vs.

K.Dhanabal .. Respondent in both C.R.Ps./
Petitioner/Petitioner/Plaintiff

Common Prayer : These Civil Revision Petitions filed under Section 115 of the Code of Procedure Code, to set aside the order and decree in E.A.Nos.13 and 14 of 2019 in E.P.No.5 of 2018 in O.S.No.31 of 2013 on the file of the learned Additional District Judge, Kumbakonam dated 03.07.2019.

For Petitioner (in both C.R.Ps.) : Mr.G.Gomathi Sankar
For Respondent (in both C.R.Ps.) : Mr.H.Lakshmi Shankar

COMMON ORDER

Heard the learned counsel appearing for the petitioner.

2.These Civil Revision Petitions have been filed against the order passed in E.A.Nos.13 and 14 of 2019 in E.P.No.5 of 2018 in O.S.No.31 of 2013 dated 03.07.2019, on the file of the learned Additional District Judge, Kumbakonam.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.31 of 2013 for a prayer of recovery of money on the basis of a mortgage deed. The preliminary decree was passed on 30.06.2014 and a final decree was passed on 07.06.2017. The respondent filed a petition in E.P.No.5 of 2018 for the execution of the decree. In that petition, the revision petitioner has filed a counter and the Court has ordered proclamation of sale on 28.03.2019. The plaintiff has filed E.A.Nos.13 and 14 of 2019 to permit him to amend the sale affidavit and the proclamation of sale in the execution petition. The petition was allowed by the execution Court. Against which, this revision has been filed.



4.The brief substance of the applications in E.A.Nos.13 and 14 of 2019 is as follows:

The preliminary decree was passed on 30.06.2014 and the final decree was passed on 07.06.2017. The defendant did not file any appeal against that judgment and decree. The respondent herein has filed an execution petition before the Principal District Court, Thanjavur. The same was numbered and transferred to learned I Additional District Judge, Kumbakonam. The execution petition was posted for sale on 28.03.2019. There is some mistake in the sale affidavit and the proclamation of sale. The error is only a typographical error and the petitioner has filed a petition to amend the affidavit and prayed for permission to amend the affidavit and the proclamation of sale.

5.The petitions were allowed by the trial Court. Against which, the revision petitioner preferred this revision petitions.

6.On the side of the petitioner, it is stated that the amendment in the proclamation of sale, after issuing publication is not maintainable. The amendment is not just a typographical error. The patta was changed in the name of the petitioner only in the year 2015. The petitioner had no right or title and the petitioner could not have executed a mortgage deed. The property is worth more than Rs.6,60,00,000/-. But the respondent is taking steps to sell the property for the claim amount of Rs.12,96,191.75/-. After issuance of proclamation of sale, subsequent amendment is not maintainable. A sale deed was executed regarding the same property in another suit in O.S.No.21 of 2011 on the file of the Additional District Court (Fast Track Court), Kumbakonam. The respondent does not have any locus standi to file the suit.

7.On the side of the petitioner, it is stated that a proclamation of sale cannot be amended under Order 21 Rule 69(2) of CPC and only a fresh proclamation has to be filed. The value of the property as per the ameen's report is Rs.6,60,00,000/- and E.P amount is Rs.12,96,191.75/-. The plaintiff wantedly suppressed the previous encumbrance, and later filed this petition, as if the suppression is only a typographical error. When a sale is adjourned under Order 21 Rule 69(2) of CPC for a longer period than 30 days, only a new proclamation is permissible under Rule 67 unless the judgment debtor waive the same and prayed the impugned order is to be set aside.

8.On the side of the respondent, it is stated that in the plaint, the plaintiff has stated all the existing encumbrance. The advocate Clerk who mentioned all the encumbrance, wrongly mentioned that sale is "not subject to those encumbrance" instead of writing 'subject to encumbrance'. The correction will not prejudice the case of the petitioner. Section 151 of CPC permits the correction. The



sale papers the advocate came to know about the corrections that has to be carried out and filed the amendment petition and the amendment petition was rightly allowed by the trial Court and the revision petition is to be dismissed.

9.It is seen that the respondent filed a mortgage suit against the petitioner. Preliminary decree and subsequently final decree was passed. The respondent filed execution petition. In that execution petition, the trial Court ordered proclamation of sale. In the sale papers, all the encumbrance are mentioned, but it is not mentioned that the sale is subject to the encumbrance.

10.On the side of the respondent, it is stated that those encumbrances were already stated in the plaint itself and that the advocate Clerk instead of mentioning 'subject to encumbrance' wrongly mentioned it as 'not subject to encumbrance' and only this clerical mistake is to be rectified by way of amendment.

11.It is seen that publication is not yet effected and that the petitioner has not come forward to question the execution proceedings or the order of sale. The petitioner has come forward only against the amendment petition under Order 26 Rule 69(2) of CPC. A sale cannot be adjourned for a longer period than 30 days. That provision is not applicable to the present petition. This revision petition is only for amendment in sale papers. Paper publication is not yet effected. Even if the amendment petition is dismissed, the respondent is entitled to file fresh sale papers or else the respondent can file fresh execution petition.

12.In the above circumstances, the impugned order is not in any way prejudice to the rights of the revision petitioner. There is nothing sufficient enough to interfere in the orders of the trial Court. These civil revision petitions are dismissed and the orders passed in E.A.Nos.13 and 14 of 2019 in E.P.No.5 of 2018 in O.S.No.31 of 2013 dated 03.07.2019, on the file of the learned Additional District Judge, Kumbakonam is confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

MRN



To

The Additional District Judge, Kumbakonam.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-11235[F] dated 12/03/2020)

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-11205[F] dated 11/03/2020)

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MK (10.06.2020) 4P 4C