

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.2916 of 2018
and C.M.P.No.17053 of 2018

N.Balraj

... Petitioner

Vs.

1. Dilip Textiles,
Rep by its Proprietor
Santhosh Kumar,
No.57, Jinnah Street,
Erode.

2. Jayaraghavi Textiles,
Rep by its Proprietor,
Balasubramaniam
Town Police Station Road,
Pollachi.

3. Mohammad Iqbal

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 26.07.2018 made in E.A.No.106 of 2018 in E.P.No.46 of 2002 on the file of the Sub Court, Pollachi by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Anandhamurthy

For Respondents

For R3 : Mr.G.Govarthanan

For Mr.B.Ramamoorthy

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 26.07.2018 passed by the learned Subordinate Judge, Pollachi in E.A.No.106 of 2018 in E.P.No.46 of 2002, thereby dismissing the petition for seeking appointment of an Advocate Commissioner.

2. The petitioner is the third party to the present proceedings. The first respondent is the plaintiff and the second respondent is the defendant. The first respondent filed suit in O.S.No.15 of 1999 for recovery of money and the same was decreed on 12.07.2000. On the strength of the decree, the first respondent filed Execution Petition in E.P.No.46 of 2002 as against the second respondent in which, the suit property was brought to sale. The third respondent was purchased the said property on the auction sale conducted on 03.10.2007.

3. In the mean time, the petitioner also purchased the suit property from the second respondent herein, by a registered sale deed dated 14.06.2000. Therefore, the petitioner filed the petition in E.A.No.241 of 2008 to set aside the sale held on 03.10.2007. He also filed another petition in E.A.No.106 of 2018 for seeking appointment of Advocate Commissioner to note down the physical features of the suit property. The Court below dismissed the said petition in E.A.No.106 of 2018 as against which, the present Civil Revision Petition.

4. The case of the petitioner is that he purchased a portion of the suit property by the registered sale deed dated 14.06.2000 from the second respondent herein. After purchase of the property, the petitioner is in possession and enjoyment of the same. While being so, the third respondent herein came to the petitioner's property and threatened him to vacate the petition premises by stating that he purchased the suit property in the Court auction. Immediately, the petitioner approached the Court below and came to know about the Execution Petition filed by the first respondent in E.P.No.46 of 2002 as against the second respondent, on the

strength of the decree passed in O.S.No.15 of 1999 on the file of the Subordinate Court, Erode. The third respondent purchased the property in the Court auction took place on 03.10.2007. In this regard, there was a dispute about the description of the property, whether tiled house or terrace building.

5. According to the petitioner there is no tiled house as detailed in the description of the suit property. The decree holder suppressed the entire facts and on the basis of the wrong description of the property, the third respondent purchased the same. Therefore, only to prove the said fact, the petitioner filed this present petition seeking appointment of Advocate Commissioner to inspect the suit property to note down the physical feature. Whereas the Court below dismissed the said petition for the reason that after attachment, the petitioner purchased the said property from the judgment debtor on 14.06.2000 and he did not file any appeal. While pending the execution petition, the petitioner filed an application seeking appointment of Advocate Commissioner and it is not necessary.

6. Considering the facts and circumstances of the case, this Court feels that if an Advocate Commissioner is appointed, no prejudice would be caused to the third respondent and it would also help the Court below to pass orders. Accordingly, the order dated 26.07.2018 passed by the learned Subordinate Judge, Pollachi in E.A.No.106 of 2018 in E.P.No.46 of 2002, is hereby set aside. The Execution Court is directed to appoint an Advocate Commissioner and pass orders on merits and accordance with law.

7. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

सत्यमेव जयते

23.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

WEB COPY

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Subordinate Judge,
Pollachi.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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