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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.50 of 2012 and  
M.P.No.1 of 2012

Kuppusamy (died)

1.Rajammal

2.Minavathi

3.Yashotha

4.Vadivel

...Appellants / Defendants

Vs.

1.Pappathi

2.Muthayee

...Respondents / Plaintiff

Prayer : Civil Miscellaneous Second Appeal filed under Section 100 R/w Order 21 Rule 90 of C.P.C., against the judgment and decree dated 21.07.2011 made in C.M.A.No.13 of 2008 on the file of the Sub Court, Rasipuram, confirming the fair and decreetal order dated 11.12.2007 made in R.E.A.No.124 of 2006 in R.E.P.No.52 of 1997 in O.S.No.246 of 1995, on the file of the District Munsif Court, Rasipuram.

For Appellants : Mr.N.Manokaran

For Respondents : R1 - died - steps due  
No appearance for R2

J U D G M E N T

The judgment and decree dated 21.07.2011 made in C.M.A.No.13 of 2008 on the file of the Sub Court, Rasipuram, confirming the fair and decreetal order dated 11.12.2007 made in R.E.A.No.124 of 2006 in R.E.P.No.52 of 1997 in O.S.No.246 of 1995, on the file of the District Munsif Court, Rasipuram, is

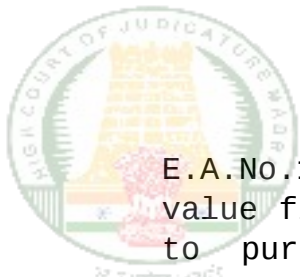


under challenge in the present civil miscellaneous second appeal.

2. The facts in nutshell to be considered are that the first appellant had executed a promissory note for a sum of Rs.10,000/- to her sister/first respondent on 23.07.1992. The first respondent, sister of the first appellant, filed O.S.No.246 of 1995 for recovery of the borrowed amount of Rs.10,000/- along with interest at the rate of 9% per annum on 24.07.1995. The suit in O.S.No.246 of 1995 was decreed exparte on 13.03.1996 for a sum of Rs.12,700/-. On 26.06.1997, the decree holder /first respondent filed E.P.No.52 of 1997, to bring 6.54 acres in S.F.No.156, Kakaveri Village, Rasipuram Taluk for sale to realise Rs.13,972/-. The appellants/defendants filed I.A.No.268 of 1997 to set aside the exparte decree and it was allowed on payment of cost of Rs.250/- and the cost amount not paid and consequently, the interlocutory application was dismissed by the Trial Court on 21.04.1998.

3. The entire 6.54 acres had been attached in E.P.No.52 of 1997 on 02.08.1998. On 05.10.1998, E.P.No.52 of 1997 was posted for filing sale papers. The sale papers were found intact and consequently, the sale notice was issued on 12.11.1998. The first respondent / plaintiff fixed the value as Rs.20,000/- on 17.03.1999. Interestingly, the Court amin had fixed the value of the property as Rs.6,50,000/-. The Court had fixed it as Rs.50,000/-. Once the plaintiff has fixed the value of the property as Rs.20,000/- and the said valuation was verified and the Court amin fixed the value as Rs.6,50,000/-, there is no other valid reason whatsoever for the Court to reduce the value from Rs.6,50,000/- to Rs.50,000/- which is certainly doubtful and cannot be trusted upon.

4. On 01.06.1999, the Court found that there was no bidder in the auction sale. E.A.No.75 of 1999 was filed to reduce the upset price to Rs.25,000/- on 16.06.1999. Even after that, they could not get any bidder in auction sale on 26.07.1999. The upset price was further reduced to a sum of Rs.20,000/- in E.A.No.279 of 1999 on 01.10.1999. Even for the reduced amount of Rs.20,000/-, no bidders came forward in the auction sale. E.A.No.406 of 1999 was filed to reduce the upset price of Rs.18,000/- on 10.12.1999. Even for that price, there was no bidders. On 08.08.2000, the first respondent filed



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E.A.No.119 of 2000 to set off the decree amount towards the value fixed and E.A.No.120 of 2000 was filed seeking permission to purchase the said property by herself. On 15.09.2000, E.A.Nos.119 & 120 of 2000 were allowed.

5. On 06.11.2000, the entire 6.54 acres of land were sold in favour of the first respondent/ plaintiff for a meager amount of Rs.19,000/-. On 25.01.2001, the sale certificate was issued. The first respondent decree holder filed E.A.No.24 of 2002 for delivery of possession on 19.12.2001. On 03.05.2006, the appellants have filed R.E.A.No.124 of 2006 under Section 47 r/w Order 21 Rule 19 of C.P.C. R.E.A.No.124 of 2006, was dismissed on the ground that the upset price reduced periodically have not been challenged and the sale was held on 02.11.2000 and confirmed on 02.01.2001. Thus, the petition in E.A.No.124 of 2006 was filed only on 03.05.2006. Thereafter, on 21.07.2011, C.M.A.No.13 of 2008 was filed before the Sub Court, Rasipuram which was also dismissed on the sole ground that the petition was not filed within 60 days.

6. Against the order passed in C.M.A.No.13 of 2008, the present second appeal is filed.

7. The substantial questions of law raised are as follows:

a. Whether the Courts below erred in law in dismissing the petition filed under Order 21 Rule 90 r/w Section 47 of C.P.C., notwithstanding the fact that the appellants have established the material irregularity and fraud in the execution, proclamation and sale of the property which have caused substantial injuries to the judgment debtor and her legal heirs?

b. Whether the Courts below are right in justifying the sale of 6.54 punja acres for Rs.19,000/- to satisfy the decree amount of Rs.13,972/- particularly when the Court amn has fixed the price as Rs.6,50,000/- and the judgment debtors have established the value as Rs.40.00 lakhs, and such procedure is in violation of Order 21 Rules 64 to 66 C.P.C.?

c. Whether the Courts are empowered to direct the judgment debtors to deposit the decree



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amount with interest de hors the wrong quoting of provision of law and bar of limitation so as to render substantial justice to protect the right to property of the judgment debtors especially when the physical possession is still with the appellants?

d. Whether the irregularity in fixing the upset price, failure to give adequate opportunity to the judgment debtors in the execution proclamation and sale proceedings would vitiate the sale, especially when the defendants never anticipated the irregularities which ended in serious hardship to them?

8. The learned counsel for the appellants mainly contended that the fixing of the upset price for the valuable property by the Court itself is irregular. When the Court a min has fixed the value of the property as Rs.6,50,000/-, the Court has not furnished any valid and acceptable reasons for refixing the upset price as Rs.50,000/- which is no way nearer to the actual value fixed by the Court a min. The said amount of Rs.50,000/- was also reduced on three occasions and finally, the upset price was fixed as Rs.18,000/-. The property measuring 6.54 acres, Kakaveri Village, Rasipuram is sold for a sum of Rs.18,000/- for the judgment debtor herself. Such a sale is to be construed as a fraud and the first Appellate Court also failed to consider these doubtful circumstances regarding the fixation of upset price in violation of the value assessed by the Court a min. The learned counsel for the appellants cited a judgment of the Hon'ble Supreme Court of India, in the case of Nanigopal Paul Vs. T.Prasad Singh and Others, reported in 1995 3SCC 579 and the Court held in paragraph No.4 as follows:

"4. We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the Single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the court receiver as approved by the learned Single Judge. Confirmation of sale was illegal. Though, as contended by Shri Ganesh that normally an application under Order 21, Rule 89 or Rule 90 or under Section 48 C.P.C., need to be filed within limitation to have the sale



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conducted by the Court set aside and that procedure need to be insisted upon, we are of the view that this Court or appellate Court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting Court sales. We are informed and it is not disputed that the appellant had deposited only Rs.5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal."

9. This Court is of the considered opinion that the manner in which the upset price was fixed by this Court in respect of the property measuring 6.54 acres is not convincing and cannot be trusted upon. The Court cannot effect such a sale in such a manner which is no way in commensuration with the actual value of the property. Thus, the upset price of Rs.18,000/- fixed by the E.A.Court in respect of the property measuring 6.54 acres, more specifically, to realise the decree amount of Rs.12,700/-, is certainly improper and not in consonance with the established principles of law. In view of such doubtful circumstances, this Court has to interfere with the judgment passed by the Trial Court as well as the first Appellate Court.

10. The learned counsel for the appellants made a submission that the appellants are ready and willing to deposit the decree amount along with interest at the rate of 9% percent from the date of borrowing till the date of deposit, pursuant to the orders passed in the present civil miscellaneous second appeal.

11. Accordingly, this Court is inclined to pass the following orders:

1. The judgment and decree dated 21.07.2011 passed in C.M.A.No.13 of 2008 confirming the fair and decreetal order dated 11.12.2007 passed in R.E.A.No.124 of 2006 are set aside. Consequently, C.M.S.A.No.50 of 2012 is allowed. No costs. Consequently, connected miscellaneous petition is closed.
2. The appellants are directed to deposit the decree amount along with interest at the rate of 9% per annum from the date of borrowing till the date of



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deposit and the respondents are permitted to file an appropriate application before the Court concerned to withdraw the said amount along with the accrued interest.

3.The appellants are directed to calculate the interest along with the principal and deposit the same within a period of 12 weeks from the date of receipt of a copy of this order, failing which, the orders passed by this Court in this appeal stands annulled automatically.

Sd/-  
Assistant Registrar

// True Copy //

Sub Assistant Registrar

gsk

To

1.The Sub Judge,  
Rasipuram.

2.The District Munsif,  
Rasipuram.

+1cc to Mr.N.Manokaran, Advocate SR.No.6766

C.M.S.A.No.50 of 2012 and  
M.P.No.1 of 2012

PA(CO)  
RVM(16/09/2021)