



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD) No.1327 of 2019

and

C.M.P (MD) No.7227 of 2019

1.Eswaran
2.K.Dhanalakshmi

... Petitioners/Petitioners/3rd party

Vs.

1.Syed Mohammed

... 1st Respondent/1st Respondent/
Decree holder/Plaintiff

2.Official Liquidator/Agriculture Officer,
Vadamadurai Block Agro Engineering
and Services Co-operative Centre,
Vadamadurai,
Vedsanthur Taluk,
Dindigul District.

... 2nd Respondent/2nd Respondent/
Judgment Debtor/Defendant

3.K.Nallasamy

... 3rd Respondent/3rd Respondent/
Auction Purchaser

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the return order dated 18.12.2018 made in unnumbered E.A.No. of 2018 in E.A.No.23 of 2018 in E.P.No.202 of 2005 in O.S.No.1220 of 1995 on the file of the Additional District Munsif, Dindigul and number the same.

For Petitioner : Mr.S.Rajasekar
For R-3 : Mr.R.R.Kannan

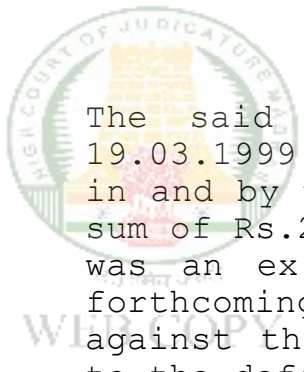
ORDER

The judgment debtor filed a petition under Section 47 of the Code of Civil Procedure in the execution proceeding filed by the decree holder/plaintiff.

2.The facts which is the run up to the filing of the above civil revision petition are as follows:-

(i)The decree holder/plaintiff has filed a suit in O.S.No.1220 of 1995 on the file of the second respondent herein for recovery of money.

<https://hccs.courts.mg/judis/cite/>



The said suit was decreed by the judgment and decree dated 19.03.1999 on the file of the Additional District Munsif, Madurai, in and by which the second respondent herein was directed to pay a sum of Rs.28,298.02/- together with interest at 18%. The judgement was an ex parte one. Thereafter, since the payments were not forthcoming, the plaintiff had initiated the execution proceedings against the defendant Society by attaching the property belonging to the defendant Society and bringing it to sale. It appears that the suit property was attached and brought to sale in the Court auction conducted in the proceedings in E.P.No.202 of 2005 on the file of the Additional District Munsif, Dingul. The third respondent herein was the successful bidder, he having quoted the highest price of Rs.8,65,000/-, the sale was also confirmed in his favour on 17.03.2017. Thereafter, the sale certificate dated 15.03.2018 was issued to the third respondent herein. While so, after the sale was confirmed under the sale certificate, the petitioners herein who are third parties to the proceedings have filed E.A.SR.No.7338 of 2021 on 18.12.2018. The said petition was returned on 18.12.2018 by the learned Principal District Munsif, Veda sandur, stating as to how the petition was maintainable, since the petitioners were not parties to the proceeding nor representatives of the parties therein. Immediately, the petitioners have taken this order returning the petition on revision to this Court.

(ii)The petitioners in their Section 47 application has contented that they are employees of the defendant society. The employees were not paid their salary and hence, had moved the Writ Petition before the Madurai Bench of Madras High Court in W.P(MD) No.9866 of 2006 challenging the property of the defendant Society being brought to auction. However, the property was auctioned and the amounts were settled towards the Employees Provident Fund and no amounts were paid to the petitioners towards their arrears of salary. In fact, the husband of the second petitioner had obtained an award from the Labour Court against the defendant Society directing them to pay a sum of Rs.3,87,060/- towards his arrears of salary. The petitioners have approached this Court in its writ jurisdiction for various orders.

(iii)The petitioners would contend that a collusive suit has been filed and the property of the society attached and brought to sale. The petitioners would further contend that the property was worth much more than the rate at which it has been sold and therefore, they had come up with this petition under Section 47 of the Code of Civil Procedure seeking a direction that the arrears of salary be paid to the petitioners and to cancel the confirmation of sale in respect of the petition schedule property.

(iv)The learned Principal District Munsif, Veda sandur, has rightly returned the petition asking the petitioners to explain as
<https://hdservices.courts.gov.in/hdservices> the petition was maintainable, particularly when the



petitioners were not parties to the proceedings nor the representatives of the parties to the suit proceedings.

3.Mr.S.Rajasekar, learned counsel appearing on behalf of the petitioners would reiterate the contents in their petition by stating that the third respondent was bent upon knocking away the property of the Society for a very low price. He would submit that if the property is sold for a higher price, then not only would the dues of the plaintiffs be settled but the arrears of salary would also be paid to the petitioners. The learned Principal District Munsif therefore may be directed to number the application without insisting on the petitioners showing proof that they were parties to the proceedings.

4.Mr.R.R.Kannan, learned counsel appearing on behalf of the third respondent on the other hand would contend that the property had been attached and the sale certificate issued to the third respondent much before the filing of Section 47 application. That apart the defendant Society has not challenged the decree passed in O.S.No.1220 of 1995 and therefore, the decree had attained finality. The Executing Court was only obliged to execute the decree and cannot re-write the decree.

5.Heard the learned counsel for the petitioners and the learned counsel for the third respondent and perused the records.

6.Admittedly, the petitioners are not parties to the execution proceedings and they have not obtained any decree against the defendant Society. The instant Execution Proceedings had been initiated to execute the decree that the first respondent had obtained in the suit in O.S.No.1220 of 1995. The first respondent had obtained the decree as early as on 19.03.1999 and the property was attached and sold only in the year 2018. For all these years, the defendant Society has not challenged the judgment and decree and neither have the petitioners herein moved any earlier application. The property which was attached by order of the Court has been sold to the third respondent as early as on 15.03.2018. The impugned petition has been filed on 18.12.2018.

7.The only ground urged by the petitioners is that they have to recover their arrears of salary only from out of the immovable properties belonging to the defendant Society. Admittedly, the petitioners do not have any decree for claiming the arrears of salary and further the arrears have not been quantified. The learned Principal District Munsif, Vendasandur, has rightly returned the petition questioning the maintainability of the very petition.

8.In these circumstances, I do not find any reason to interfere with the order dated 18.12.2018 where the plaint has been returned on the ground that the petitioners are neither parties to



proceedings. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (A.D II)

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Additional District Munsif,
Dindigul.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-34871[F] dated 17/11/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-34990[F] dated
18/11/2021)

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RS (07.12.2021) 4P 4C