



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**
C.R.P. (MD) Nos.2042 and 2043 of 2021
and
C.M.P. (MD) No.10931 of 2021

V.Swaminathan ... Petitioner/Petitioner/Claimant
3rd Party
vs.
1.A.R.Mohan Ram ...1st Respondent/1st Respondent/
DecreeHolder Plaintiff
2.R.Geetharani
3.Priya
4.Bhuvaneswari
5.Archana
6.Manikandan
7.Suganya ... Respondents No.2 to 7/Respondents
No.2 to 7/ Judgment Debtor/Defendants

COMMON PRAYER:- This Petitions are filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 03.09.2020 made in E.A.SR.Nos.765 and 742 of 2020 in E.P.No.102 of 2016 in O.S.No.10 of 2006 on the file of the learned Additional District Judge, Kumbakonam and direct the said trial Court to number the said E.A.SR.Nos.765 and 742 of 2020.

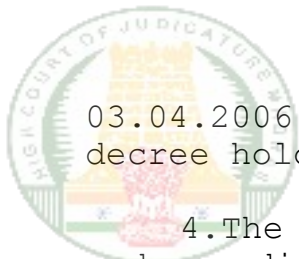
For Petitioner
in both C.R.Ps., : Mr.S.Sankar

COMMON ORDER

The 3rd party/claimant is before this Court challenging the docket order made in E.A.S.R.Nos.765 and 742 of 2020 in E.P.No.102 of 2016 in O.S.No.10 of 2006 on the file of the learned Additional District Judge, Kumbakonam.

2.The brief facts preceding the filing of the above Civil Revision Petitions are as follows:-

3.It is the case of the petitioner that the 1st respondent herein had filed a suit in O.S.No.10 of 2006 against the respondents 2 to 7 herein. An attachment order before the judgment in respect of the suit property was passed on 13.03.2006 in I.A.No.43 of 2006 in O.S.No.10 of 2006. The attachment was also made absolute on



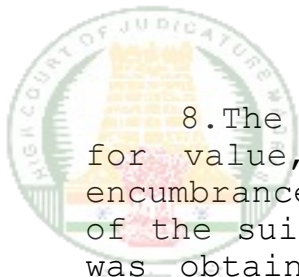
03.04.2006. Ultimately, the suit was decreed on 01.10.2012 and the decree holder/1st respondent had filed execution proceedings.

4.The petitioner would contend that though the attachment was made pending the suit, the same was however not communicated to the concerned Sub Registrar and therefore not reflected in the encumbrance certificate. Without being aware about the attachment order, the petitioner's father had purchased T.S.No.984 under a registered sale deed dated 03.05.2011. While so, the 1st respondent had filed the execution proceedings in E.P.No.12 of 2013 to sell the above said property to realize the decree amount.

5.The petitioner would further submit that the brother of Radhakrishnan, who passed away pending the proceedings, had filed a claim petition in E.A.No.5 of 2016 stating that the subject matter of attachment was joint family properties and Radhakrishnan had executed a release deed in respect of the properties situate in T.S.No.984 and he therefore sought to raise the attachment in respect of the properties. This application was allowed in respect of T.S.No.984 and the said order was not challenged by the decree holder. The petitioner herein has now filed these impugned petitions.

6.It is his case that the suit property originally belonged to one Venkatesa Chettiar, who had purchased the same under a registered sale deed dated 03.11.2000. On 19.12.2001, the said Venkatesa Chettiar died leaving behind him surviving three sons, Rajasekaran, Pandurangan and Radhakrishnan (the 1st defendant in the suit O.S.No.10 of 2006). On 09.09.2006 pending the suit, Radhakrishnan had passed away leaving behind him surviving defendants 2 to 7. The remaining legal heirs of Venkatesa Chettiar decided to divide their properties amicably amongst themselves and the heirs of Radhakrishnan and a release deed was also executed in favour of the legal heirs of Radhakrishnan under a registered release deed dated 14.06.2007 in respect of the suit properties. Since then they have been in peaceful possession and enjoyment of the same.

7.The petitioner would submit that under a registered sale deed dated 03.05.2011, the respondents 2 to 7 had sold the property to the petitioner's father and his father has been in possession and enjoyment of the same. Thereafter on 08.06.2011, his father had executed a settlement deed in respect of the suit property in favour of the petitioner, in and by which he became the absolute owner of the same. The petitioner had also exercised all rights of ownership by mortgaging the property with the City Union Bank Limited, Kumbakonam and redeeming the same on 12.09.2014. While so, on 26.03.2015, the petitioner was shocked to receive a notice as occupant of the suit property informing him that the property had been attached as early as on 16.02.2006 and the same had been ~~attached~~ by the 1st respondent herein in E.P.No.12 of 2013. It was only then that the petitioner had come to know about the attachment.



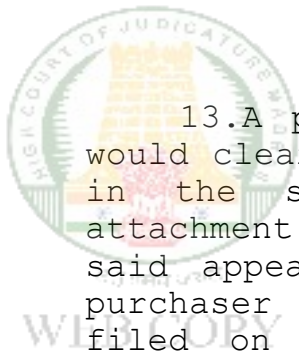
8.The petitioner would submit that he is a *bona fide* purchaser for value, since the attachment had not been reflected in the encumbrance certificate, which he had applied prior to the purchase of the suit property. In fact even when the encumbrance certificate was obtained prior to his mortgaging the property with the City Union Bank Limited also, the encumbrance was not reflected and therefore, the execution proceeding was absolutely unsustainable. That apart the value of the property was over a sum of Rs.1 Crore and it is being sought to be sold for a decree amount of just Rs.18,71,143.75/-.

9.The petitioner would submit that originally he had filed E.A.No.3 of 2015, which was transferred to the file of the learned Additional District Judge, Kumbakonam and renumbered as E.A.No.8 of 2016. By order dated 24.03.2017, this claim petition was dismissed, against which the petitioner on wrong legal advice had preferred an appeal before this Court in C.M.A.(MD) No.617 of 2017, which was dismissed on merits without discussing the maintainability of the appeal. After the dismissal, he was advised to file a separate suit and the same has also been filed and the said suit is yet to be numbered.

10.The petitioner would submit that he had come to know about the sale proclamation made with reference to the property, which is the subject matter of the claim petition and other properties on 12.02.2020 and that the sale had been made on 12.03.2020. He had therefore come forward with E.A.SR.No.765 of 2020 to stay the confirmation of sale till a fresh proclamation is made in accordance with law.

11.The case of the petitioner was that the subject matter of the proclamation included properties which had already been released by order of the Court in E.A.No.5 of 2016 and without excluding those survey numbers, the proclamation was unsustainable. That apart, he had also pleaded that the execution proceeding suffered from excessive execution. Along with this claim petition, the petitioner had also filed E.A.SR.No.742 of 2020 to set aside the sale made in E.P.No.102 of 2006. Both the applications were posted for maintainability and by order dated 03.09.2020, the learned Additional District Judge, Kumbakonam, dismissed the above applications on the ground that despite repeated opportunities, the petitioner was not come forward to submit his arguments and further, the petitioner had already filed E.A.No.3 of 2015, which had been dismissed on 24.03.2017. Challenging these orders, the petitioner has moved the above revisions.

12.The learned counsel appearing for the petitioner would more or less adopt the contents of his claim petition as his arguments, besides submitting that the learned Judge ought to have numbered the petition and not posted the matter for maintainability. That apart, it is also the argument that the Court ought to have heard the <https://hcservices.courts.gov.in/hcservices/> passing orders. The learned counsel had also produced a copy of the judgment in C.M.A.(MD) No.631 of 2017, which was filed challenging the order passed in E.A.No.8 of 2016.



13.A perusal of the above order in C.M.A.(MD) No.631 of 2017 would clearly indicate that the order is one passed on merits. Even in the said application, the petitioner had challenged the attachment and the sale, in fact the point for consideration in the said appeal was as to whether the petitioner was a *bona fide* purchaser or not. The learned Judge has considered the documents filed on either side and the learned Judge had come to the conclusion that the petitioner herein had not marked the encumbrance certificate that he had produced prior to his purchase as also the legal opinion, which he had obtained, which would only go to show that the appellant was deliberately keeping away the evidence from the Court and even the encumbrance certificate, which had been marked, did not reflect the name of the petitioner or his father, but some third party by name, Sundaramurthy. The learned Judge had also observed that the remedy available to the petitioner was only against his vendor and not against the property that had been attached and had dismissed the appeal. The possession has not been changed after the said order. Having suffered an earlier order, in which the very same defense has been taken, the present applications filed are nothing but an abuse.

14.The petitioner claims to have filed a suit challenging the auction sale and by filing these applications, the petitioner is indulging in forum shopping. Earlier, the claimant has filed a petition under the provisions of Order XXI Rule 59, which after contest has been dismissed and confirmed in an appeal. Further, a perusal of the impugned order would also indicate that the petitioner has not appeared before the Court to argue the petitions. Therefore, I do not find any illegality or infirmity in the impugned orders.

15.In fine, these Civil Revision Petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The Additional District Judge,
Kumbakonam.