



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.07.2021
Pronounced on : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.2350 of 2019

L.Sukumar :Petitioner/Respondent/
3rd Party/3rd Respondent
Vs.
1.D.Venkada Subramaniyan :1st Respondent/1st Respondent/
Petitioner/Plaintiff
2.N.Suresh Babu
3.G.N.Madhana Gopal :Respondents 2 & 3/
Respondents 2 &3/Defendants 1 & 2

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order and Decree dated 23.09.2019 made in E.A.No.23 of 2019 in E.P.No.703 (A) of 2012 in O.S.No.263 of 2012 on the file of the District Munsif, Palani, Dindigul District.

For Petitioner : Mr.G.Gomathi Sankar
For 1st Respondent : Mr.D.Venkatesh
For Respondents : No Appearance
2 and 3

ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.23 of 2019 in I.A.No.703 (A) of 2012 in O.S.No.263 of 2012, dated 23.09.2019, on the file of the Principal District Munsif Court, Palani, dismissing the petition filed under Order 21 Rule 16 of the Code of Civil Procedure.

2.The revision petitioner is the petitioner in the interlocutory application and a third party to the suit proceedings. The first respondent/plaintiff has filed a suit in O.S.No.263 of 2012, against the respondents 2 and 3/defendants 2 and 3 and one D.Rajendran, claiming permanent injunction restraining the defendants from damaging the north-south wall situated on the western side of the plaintiff's house and from making any temporary or permanent constructions therein.



3.The plaintiff has also filed an application in I.A.No.572 of 2012, under Order 39 Rule 1 and 2 of the Code of Civil Procedure, claiming temporary injunction and obtained interim orders, dated 14.09.2012. During the subsistence of the interim order, since the defendants have violated the interim orders passed by the Trial Court, the plaintiff has filed a petition in I.A.No.703(A) of 2012, under Order 39 Rule 2A of Code of Civil Procedure to punish the defendants for disobeying the orders of the Court by attachment of their property and by arresting them and committal to the Civil Prison.

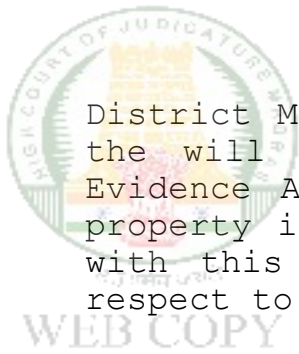
4.It is not in dispute that the learned District Munsif has passed an order in I.A.No.703 (A) of 2012, dated 10.04.2017 for settlement of proclamation. It is also not in dispute that subsequently attached property was sold in Court auction and that one Sukumar had purchased the property in Court auction sale held on 09.08.2017.

5.It is also not in dispute that sale was confirmed on 12.10.2017 and sale certificate was issued to the Court auction purchaser Sukumar on 28.09.2018.

6.The revision petitioner, who is none other than the Court auction purchaser Sukumar's sister's daughter, claiming title to the said property on the basis of Will, dated 27.01.2018, alleged to have been executed by the said Sukumar, who died subsequently on 26.08.2018, has filed the above application under Order 21 Rule 16 of the Code of Civil Procedure, seeking permission for filing the execution petition to take possession of the property purchased in Court auction.

7.The learned District Munsif, Palani, after enquiry has passed the impugned order, dated 23.09.2019, dismissing the said petition. Aggrieved by the said order of dismissal, the petitioner in E.A.No.23 of 2019 has come forward with the present Civil Revision Petition.

8.It is pertinent to mention that the plaintiff alone has filed the counter statement and contested the said petition in E.A.No.23 of 2019, whereas, the defendants 1 and 2 have neither filed any counter statement nor raised any objection. The objections raised by the plaintiff are two fold. The first objection is that the revision petitioner has not chosen to prove the alleged will as per the provisions of the Indian Evidence Act and Indian Succession Act, that the revision petitioner in collusion with the defendants 1 and 2 has filed the above petition, that the will, dated 27.01.2018, which is an unregistered one, is surrounded by suspicious circumstances and that therefore the above petition only on the basis of the will, dated 27.01.2018, which was also not proved, is ~~legally not maintainable~~. As rightly observed by the learned



District Munsif, though the first defendant has taken a stand that the will was not proved in terms of Section 68 of the Indian Evidence Act, he is a third party, so far the petition mentioned property is concerned and that since he has no connection whatever with this property, is not entitled to raise any objection with respect to the will.

9. Now coming to the main objection of the plaintiff, that the above petition, as per Article 134 of the Indian Limitation Act is hopelessly barred by limitation. Article 134 of the Limitation Act contemplates the period of limitation as one year for filing application, for delivery of possession by a purchaser of immovable property at a sale in execution of a decree and the period would commence from the date when the same becomes absolute. The contention of the revision petitioner is that the Court auction purchaser Sukumar had no issues, that his wife Rooba had predeceased him on 11.02.2018, that while he was in good health executed a will, dated 27.01.2018, in favour of the revision petitioner in respect of the property purchased in the Court auction, that while the said Sukumar was under the care of the revision petitioner, he died on 26.08.2018 and the Will came into force and the revision petitioner has become owner of the property and that therefore, he may be permitted to file an Execution Petition, seeking delivery of the said property. As already pointed out, in the present case, the said Sukumar had purchased the property in Court auction sale held on 09.08.2017, for Rs.12,02,500/-, that the sale was confirmed on 12.10.2017 and that sale certificate was issued to the said Sukumar on 28.09.2018. As rightly contended by the learned Counsel for the plaintiff, the petition for possession, as per Article 134 of the Limitation Act, should have been filed within one year from 12.10.2017 i.e., on or before 12.10.2018, but, the above petition came to be filed on 11.02.2019.

10. A controversy arose as to whether, the period of one year under Article 134 of the Limitation Act is to be computed from the date of confirmation of sale or from the date on which sale certificate was issued. The Hon'ble Supreme Court in **Pattam Khader Khan Vs. Pattam Sardar Khan** reported in **1996 5 SCC 48**, has held that the Court auction purchaser has to ask delivery of possession of the property purchased within one year from the date of sale becoming absolute, rather than from the date of issuance of sale certificate. The relevant paragraphs are extracted hereunder,

"12. Such being the state of law on the subject, we fail to see how the a High Court could have come to the conclusion that even though the sale becomes absolute on confirmation under Order 21 Rule 92 CPC effectively passing title, the same can only be complete when evidenced by a sale certificate issued under Order 21 Rule 94, and that unless the sale

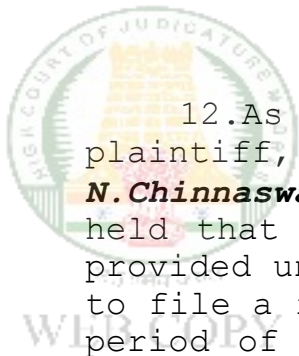


certificate is issued, limitation cannot start for the purpose of an application under Order 21 Rule 95 CPC, vis-a-vis, Article 134 of the Limitation Act, 1963. The High Court, in our view erred in holding that it is only from the date when a sale certificate is issued, that the limitation starts running. Such view of the High Court would not only cause violence to the clear provisions of Article 134 of the Limitation Act but have the effect of unsettling the law already settled.

13. There can be a variety of factors conceivable by which delay can be caused in issuing the sale certificate. The period of one year limitation, now prescribed under Article 134 the Limitation Act, 1973, in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act 1908, is reflective of the legislative policy of finalising proceedings in execution as quickly as possible by providing a quick forum to the auction-purchaser to ask delivery of possession of the property purchased within that period from the date of the sale becoming absolute, rather than from the date of issuance of the sale certificate. On his failure to avail of such quick remedy the law relegates him to the remedy of a suit for possession in a regular way."

11. In the case of **The Nazereth Co-operative Building Society Limited, through its Special Officer Vs. Kanakaraj and others** reported in **2003 (3) CTC 217**, this Court by following the judgment of the Hon'ble Supreme Court in Pattam Khader Khan's case, cited supra, has held as follows:

"25. The principles laid down by the High Courts and the Honourable Apex Court would disclose that the fact of no initiating proceedings under Section 47 of the Code of Civil Procedure as contemplated under Article 134 of the Limitation Act, which is for quicker remedy, cannot bar the auction purchaser to approach the competent Court under common law to take delivery of possession within a period of 12 years from the date of the sale being made absolute. Therefore, the contention raised by the learned counsel appearing for the respondent that the suit is barred under Section 47 of the Code of Civil Procedure cannot be sustained in view of the case laws cited above."



12.As rightly contended by the learned Counsel for the plaintiff, this Court in the case of **S.Siva Subramanian Vs. N.Chinnaswamy** reported in **2012 (2) Law Weekly 839** has specifically held that though the auction purchaser had not availed the remedy provided under the Code of Civil Procedure, it is always open to him to file a regular suit for possession based on title, subject to the period of limitation prescribed therefor. A single Judge of this Court in **Vedhanthipillai and others Vs. C.Kaja Mohideen** reported in **Manu/TN/1689/2016**, has also reiterated the same position that if an auction purchaser has not filed an application for delivery under Order 21 Rule 95 of the Code of Civil Procedure within a year, as contemplated under Article 134 of Limitation Act, then the auction purchaser can very well file a regular suit for recovery of possession within 12 years by invoking Article 136 of the Limitation Act.

13.In the present case, as already pointed out, the above petition seeking permission to file the Execution Petition invoking Article 134 of Limitation Act itself was filed on 11.02.2019, after the lapse of four months from 11.10.2018, the date on which the period of limitation got expired. As rightly pointed out by the learned District Munsif, the above petition is hopelessly barred by limitation.

14.Considering the above, the decision of the Trial Court dismissing the said petition cannot be found fault with and consequently this Court concludes that this Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

15.In the result, the Civil Revision Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

lr

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

1. The District Munsif,
Palani, Dindigul District.

2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-33485[F] dated
01/11/2021)

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29.10.2021

MGJ/PM(17.11.2021) 6P 4C