



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.2353 of 2019

and

C.M.P(MD) No.12432 of 2019

WEB COPY

Moideen Mansoor

... Petitioner/ Petitioner/
5th Respondent/ Auction Purchaser

Vs.

1.Mubarak Nisha

2.Habbeb Nisha

.. 1st & 2nd Respondents/ Petitioners/
Claim Petitioners

3.Shanmugaraj

4.Ajmalkhan

Asiyabeevi (died)

5.Ashifkhan

...3rd to 5th Respondents/

3rd to 6th Respondents/

1st to 4th Respondents/ 1st to 4th Respondents

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair order and decreetal order dated 17.11.2019 in E.A (Unnumbered) of 2019 in E.A.No.36 of 2008 in E.P.No.54 of 2008 passed by the Subordinate Judge, Theni in O.S.No.214 of 2004 on the file of Subordinate Judge, Periyakulam.

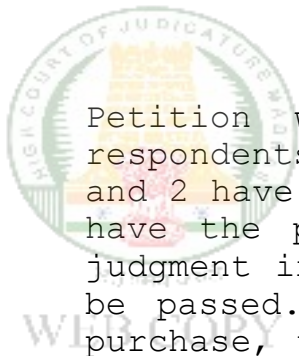
For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.H.Lakshmi Shankar

ORDER

The auction purchaser has taken out an application to decide the maintainability of the application filed by the respondents 1 and 2 under Order 21 Rule 90 CPC as a preliminary issue. This petition was dismissed by the learned Subordinate Judge, Theni, without numbering the same and after hearing the counsel for the petitioner.

2.It appears that the third respondent herein had filed a suit in O.S.No.214 of 2004 on the file of the Sub Court, Periyakulam, for recovery of a sum of Rs.1, 89,946.65/- together with interest on a sum of Rs.1,40,000/-. The defendant therein who is the father of the respondents 1 and 2 (claim petitioners) and the respondents 4 and 5 had remained *ex parte* and an *ex parte* decree came to be passed. Thereafter, the decree holder had filed E.P.No.54 of 2008 to bring the property of the defendant to sale. When the Execution



Petition was filed, the defendant had died. Therefore, the respondents 4 to 6 were brought on record, however, respondents 1 and 2 have not been brought on record. The decree holder sought to have the property sold as the same had been attached before the judgment in O.S.No.214 of 2004, wherein the ex parte decree came to be passed. The property was brought to sale and in the auction purchase, the fifth defendant who is none other than the brother in law of the fourth respondent, has purchased the property and the claim petitioners who are the daughters on coming to know about this proceedings and the sale of the property, had filed E.A.No.36 of 2008 under Order 21 Rule 10 CPC to set aside the auction.

3.In the affidavit filed in support of the said petition, they have set out as to how the entire sale and the execution proceedings itself, was a collusive one and made with an intent to grab the property of Abdul Kareem. It was their categorical case that their father was kept in the dark about the suit and the property worth several crores has been sold for meeting a decree, which could easily have been paid of by the claimants or by the respondents 4 to 6. That apart, the fourth respondent has ensured that the property is purchased by his brother-in-law which would clearly prove the intent of the respondents. While the said petition is pending, the auction purchaser has come forward with the impugned petition to raise the issue of maintainability of E.A.No.36 of 2008. The petition under Order 21 Rule 90 CPC has been filed as early as in the year 2008 and the present application has been filed 11 years later.

4.The learned counsel for the respondents would submit that now the petition is at the stage of the Advocate Commissioner filing his report regarding the valuation of the property.

5.In these circumstances, this Court does not deem it fit to interfere with the order passed by the learned Subordinate Judge, Theni. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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.

WEB COPY

To:-

1.The Subordinate Judge,
Theni.

2.The Subordinate Judge,
Periyakulam.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-37024[F] dated 02/12/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-37066[F] dated 02/12/2021)

C.R.P (PD) (MD) No.2353 of 2019
01.12.2021

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