



C.R.P.No.756 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2022

DELIVERED ON : 21.12.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.756 of 2015
and C.M.P.Nos.1 and 2 of 2015

Easwaramurtthi

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Petitioner

Vs.

Arunachala Gounder (died)

1. Palanisamy Gounder

Palanisamy Gounder (died)

represented by L.Rs

2. Kuilathal

3. Sundarasamy

4. Mahalingam

5. Sarojini

6. V.Loganathan

..

Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree passed by the Ist Additional District Munsif, Coimbatore, E.A.No.168 of 2012 in E.P.No.409 of 2003 in O.S.No.384 of 1983 on the file of the Ist Additional District Munsif, Coimbatore.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel,
for Mr.A.K.Ravi

For Respondents

R1 : Died (steps due)

R2 and R3 : No appearance



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C.R.P.No.756 of 2015

R4 and R5 : No appearance
Notice served
R6 : Mr.K.Myilsamy
for Mr.Esasan

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order passed in E.A.No.168 of 2012 in E.P.No.409 of 2003 in O.S.No.384 of 1983, thereby dismissing the petition to set aside the sale in the auction conducted on 26.03.2012.

2. The first deceased respondent filed a suit as against the second respondent for recovery of money in O.S.No.384 of 1983. It was decreed by the Judgment and Decree dated 16.10.1993 and in order to execute the same, the subject property was brought for sale under Court auction. The Court auction sale was conducted on 26.03.2012 and the subject property was sold on that date itself. The 6th respondent herein purchased the suit property under the Court auction. In pursuant to the Court auction sale, the sale certificate was issued on 24.12.2013, in favour of the auction purchaser. In the meanwhile, the petitioner herein purchased the suit property by the registered sale deed dated 27.11.1997 from the Judgment Debtor. Therefore, the petitioner filed an application to set aside the auction sale conducted on 26.03.2012. The execution Court dismissed



C.R.P.No.756 of 2015

the same and the aggrieved by the same, this present revision petition.

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3. The learned Senior Counsel for the petitioner would submit that the decree holder filed a suit for recovery of money to the tune of Rs.3300/-. The said suit was decreed and attached the suit property ad-measuring 5.10 acres under the first execution petition filed by the decree holder in E.P.No.114 of 1994. The attachment was effected on 24.01.1995. Though, entry made in the encumbrance on 30.06.1995, with regard to the attachment of the suit property, subsequently, the execution petition was not pursued by the decree holder and the same was dismissed. Therefore, the attachment was ceased and the suit property is free from all encumbrances. Hence, by a registered sale deed dated 27.11.1997, registered vide Document No.3629 of 1997 the petitioner purchased the suit property. Thereafter, the decree holder filed another execution petition in E.P.No.409 of 2003 in which again, attachment was ordered on 29.10.2004. Though, the purchase of the suit property is reflected in the encumbrance certificate, the decree holder had brought the suit property for auction sale. On 26.03.2012, the auction sale was conducted and the suit property was sold in the Court auction on that date itself. The 6th respondent purchased the suit property, without verifying the encumbrance over the suit property for the sale



C.R.P.No.756 of 2015

consideration of Rs.22,55,000/-. It is an excessive execution, since the decree holder received only a sum of Rs.10,445/-. The petitioner filed a petition to set aside the auction sale dated 26.03.2012, it was returned on 12.06.2012 for want of some corrections. Again it was re-presented immediately and the Court below issued challan only on 23.08.2012. Thereafter, the petitioner deposited a sum of Rs.2,17,000/- in compliance of the Order 21 Rule 89 of CPC. Therefore, the auction sale is invalid and directly hit under Order 21 Rule 57 of CPC, since the suit property was already attached in the first execution petition and thereafter, the execution petition was dismissed and as such the attachment shall be deemed to have ceased. Therefore, at the time of purchasing the suit property by the petitioner, there was no attachment and no charge was created over the property. That apart, the Court below failed to examine the Judgment debtor as contemplated under Order 21 Rule 41 CPC before attaching the property. Therefore, the Court below mechanically attached the property and brought for sale to the Court auction without even examining the Judgment debtor.

4. Per contra, the learned counsel for the 6th respondent submitted that the first execution petition filed by the decree holder in E.P.No.114 of 1994 was



C.R.P.No.756 of 2015

terminated, since the said execution petition was filed only for attachment of the suit property. Therefore, the attachment of the suit property cannot be said to have ceased after termination of the execution petition. The said second execution petition was filed for sale of the suit property. Therefore, there was no second attachment and the Execution Court had brought the property for Court auction sale. In the Court auction, the 6th respondent purchased the suit property for a valid sale consideration for a sum of Rs.22,55,000/-. Immediately, he had deposited $\frac{1}{4}$ th of the sale consideration before the execution Court. The balance sale consideration was deposited on 07.04.2012 and he was issued sale certificate on 24.12.2013. He further submitted that the petitioner filed the present revision petition under Order 21 Rule 89 of CPC and failed to fulfill the two conditions as contemplated under the said provisions. The petitioner deposited only Rs.2,17,435/- that too on 31.08.2012 instead of Rs.7,12,750/-. Therefore, the execution Court rightly dismissed the petition and it does not warrant interference by this Court.

5. Heard, Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioner and Mr.K.Myilsamy, learned counsel appearing for the 6th respondent



C.R.P.No.756 of 2015

and perused the materials available on record.

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6. The decree holder in O.S.No.384 of 1983 filed the first execution petition in E.P.No.114 of 1994, for attachment of suit property. On 06.02.1995, the suit property was attached by the Execution Court and the same was registered before the Sub Registrar Office, Thondamuthur, vide Document No.03 of 1995. Subsequently, the execution petition was terminated by the Execution Court. While attachment was subsisting, the petitioner purchased the suit property from the Judgment debtor by the registered sale deed dated 27.11.1997 vide Document No.3629 of 1997. While being so, the decree holder filed second execution petition in E.P.No.409 of 2003 for sale of suit property in pursuant to the Judgment ordered in the earlier execution petition in E.P.No.114 of 1994. The Execution Court brought the suit property for sale and the Court auction sale was held on 26.03.2012. The suit property was purchased in the Court auction sale by the 6th respondent herein for the said consideration of Rs.22,55,000/-. Thereafter, the decreed amount with subsequent accrued interest as on the date of Court auction to the tune of Rs.10,445/- i.e, the sale proclamation amount was deposited in the execution Court.

7. A perusal of encumbrance certificate revealed that the attachment



C.R.P.No.756 of 2015

was recorded by the Sub Registrar Office, Thondamuthur vide Document No.03 of 1995 and it is reflected in the encumbrance certificate in respect of the suit property.

8. The learned Senior Counsel appearing for the petitioner vehemently contended that the attachment made in respect of the suit property was ceased, since the execution petition was dismissed by the Execution Court. It is pertinent to note here that the first execution petition was filed only for attachment of suit property and after the attachment of the suit property, the execution petition was terminated. Thereafter, the second execution petition was filed only for bringing the suit property for Court auction sale. Therefore, the Order 21 Rule 57(2) of CPC is not applicable to the case on hand. Further, there was no second attachment of the suit property. In the first execution petition, already the suit property was attached by the execution Court and the same was registered vide Document No.03 of 1995 on 06.02.1995 itself. Thereafter, there was no further attachment of the suit property. There was no endorsement in the encumbrance certificate as alleged by the petitioner as if the suit property was second time attached in the second execution petition. In fact, the Judgment debtor knowing the fact that already the suit property was attached in E.P.No.114 of 1994,



C.R.P.No.756 of 2015

executed the sale deed in favour of the petitioner. The said attachment was duly registered and even then the petitioner purchased the suit property.

9. That apart, the petitioner filed this petition on 11.04.2012. However, the petitioner failed to deposit the bondage amount + 5% of the sale value as interest and the proclamation amount. Therefore, it was returned and again re-presented on 14.06.2012. Therefore, the petitioner failed to comply the provisions under Order 21 Rule 89 of CPC and the petition filed under Order 21 Rule 89 of CPC is not maintainable.

10. The learned Senior Counsel appearing for the petitioner further contended that the attachment of the suit property is deemed to have ceased, since the first execution petition was dismissed. A perusal of records revealed that the first execution petition filed by the decree holder in E.P.No.114 of 1994 was terminated after attachment of the suit property and registered vide Document No.03 of 1995 in the office of the Sub Registrar, Thondamuthur. Though, there was no records available to conclude that the execution petition was dismissed, there was no endorsement in the encumbrance certificate in respect of the suit property as if the attachment was raised. After registration of



C.R.P.No.756 of 2015

the attachment of suit property, when the attachment was very much in force, the petitioner purchased the suit property on 27.11.1997 vide Document No.3629 of 1997. Therefore, the provisions under Order 21 Rule 57 is not applicable to the case on hand. Insofar as the Order 21 Rule 89 is concerned, the Clause A of Sub Rule(1) requires the applicant to deposit in Court 5 percent of the purchase money for payment to the auction purchaser. Deposit of the requisite amount in the Court is a condition precedent or a sine qua non to an application for setting aside the execution of sale and such a amount must be paid within a period specified in the rule and if the deposit is made after the time limit, the application must be dismissed. It should be unconditional and unqualified and the decree holder or the auction purchaser should be able to get amount at once. Therefore, the sale cannot be set aside unless entire amount specified in sub rule 1 is deposited within 60 days from the date of sale and if it is beyond 60 days, the Court cannot allow the application.

11. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below and



C.R.P.No.756 of 2015

this revision is liable to be dismissed. Accordingly, this Civil Revision petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.12.2022

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

The Ist Additional District Munsif, Coimbatore.

G.K.ILANTHIRAIYAN, J.

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C.R.P.No.756 of 2015

C.R.P.No.756 of 2015
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21.12.2022