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C.M.S.A.No.67 of 2022

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 10.08.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.S.A.No.67 of 2022

Veeramani ... Appellant

Vs.

M.Chandran ... Respondent/Appellant/Petitioner
/4th Respondent

(Cause title accepted vide orders of this Court dated 23.06.2022 in C.M.P.No.9939 of 2022 in C.M.S.A.No.(SR).44870 of 2021 by PTAJ)

Prayer: Civil Miscellaneous Appeal is filed under Section 100 of the Code of Civil Procedure read with Order XLII Rule 1 of the Code of Civil Procedure against the Judgment and Decree dated 16.04.2018 in C.M.A.No.14 of 2014 on the file of the learned Principal District Judge, Chengalpet, in E.A.No.9 of 2005 in E.P.No.100 of 2000 dated 17.06.2014 on the file of the learned Subordinate Judge, Maduranthakam.



For Appellant : Mr.Kumar Rajan

JUDGMENT

Aggrieved by the Judgment passed by the learned Principal District Judge, Changalpet, in C.M.A.No.14 of 2014 in and by which the learned Judge has reversed the Judgment passed by the learned Subordinate Judge, Maduranthakam, in E.A.No.9 of 2005 in E.P.No.100 of 2000, the legal representative of the 2nd plaintiff/Decree Holder is before this Court.

2.The facts in brief are as follows:

One Kasiammal and Pitchaiammal who are the daughters of one Mari Gounder had filed a suit for partition against Mari Gounder and others. The respondent herein was the 4th defendant in the suit. This suit came to be compromised between the parties and a compromise decree was passed on 11.04.2000 in and by which the defendants were



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obligated to pay a sum of Rs.4,30,000/ to the plaintiffs. Since the defendants had already paid a sum of Rs.1 lakh the balance sum of Rs.3,30,000/- was payable within six months from the date of compromise, failure to pay the said amount would entail the payment of interest @9% per annum.

3.In addition, the plaintiffs were allotted 6 ½ cents in S.No.176/1F of Viswarayanallur Village. They had also declared that the Release Deed dated 04.03.1981 executed in favour of Govinda Gounder and Mari Gounder were true and valid. Since the amount had not been paid as per the compromise the plaintiffs had filed E.P.No.100 of 2000 to attach the immovable properties and bring the same to the sale to realize a sum of Rs.3,40,880.25p. While the appeal was pending the 4th defendant/5th respondent had come forward with a petition in E.A.No.9 of 2005 to set aside the court auction under Order 21 Rule 90 and Section 151 of the Code of Civil Procedure.



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4.It is his case in the said petition that the decree holders have been paid the substantial amount towards decree debt. Despite which the properties had been brought to sale. He would submit that the properties belonging to him has been sold in Court auction for a sum of Rs.2,14,990/- on 22.12.2014. It is his case that the sale has not been conducted in a proper manner and the same is steeped with the following irregularities:

(a)There was no proper proclamation and before the terms of the proclamation was settled, the sale had been announced

(b)As soon as the first date of sale was over the decree holder obtained the permission of this Court to bid which clearly indicates their intention to knock away the property.

(c)The 4th defendant/petitioner has not been served with a notice in the application filed by the decree holder seeking the permission to bid.

(d)There is a deliberate attempt to keep away the bidders.



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(e)There is no clarity as to where the well and pumpsets were

situate. The value of the property ranged from anything between Rs.1,300/- to Rs.5,100/- but the properties have been valued at a very very low rate.

5.The learned Subordinate Judge by his order dated 17.06.2014 proceeded to dismiss the application filed by the 4th defendant/5th respondent. Aggrieved by the same, he had filed C.M.A.No.14 of 2014 on the file of the learned Principal District Judge, Changalpet. The learned District Judge, on a detailed consideration of the records and the order of the trial Court, had set aside the order passed by the learned Subordinate Judge, Maduranthagam and allowed the appeal. Aggrieved by the same, the legal representatives of the 2nd petitioner/Decree holder is before this Court.



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6. Heard the learned counsel appearing for the appellant and perused the papers.

7. At the outset, it is seen that except for the appellant no other legal representatives of the deceased 2nd plaintiff has taken steps to file this application. The learned District Judge has set out in details the various flaws and irregularities that have taken place in the sale. The same is captured hereinbelow:

(a) There was no proper publication of sale.

(b) Though the evidence has been let in by the petitioner namely the respondent herein and he had been cross examined the learned Subordinate Judge endorsed that there has been no oral evidence which indicates the total non application of mind.

(c) Further, the cross examination of the Senior Bailiff has not been taken note off.



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(d)As per the records, a total sum of Rs.3,59,100/- was paid on 17.07.2002 and pending the execution petition on 08.12.2003, a sum of Rs.16,500/- was paid.

8.The property was brought to sale for the balance amount. As per the decree, the defendants are liable to pay a sum of Rs.4,30,000/- to the plaintiffs out of which on the date of the compromise itself a sum of Rs.1,00,000/- had been paid. Therefore, in all a sum of Rs.4,75,000/- had been paid. Admittedly, Amin's office has made a note about the decree holders value and the Amin's value. The Courts has independently considered the same and fixed the value and on the contrary has accepted his undermined the Amin's value. The Court below has failed to value the properties item wise and despite a major portion of the decree amount being paid, the entire property brought to sale. The Court has not taken note of the admission of the Amin with the proper publication has not been effected.



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Therefore, the order passed by the learned Principal District Judge, Chengalpet, in reversing the Judgment passed in E.A.No.9 of 2005 is in order and does not require any reconsideration. Consequently, this Civil Miscellaneous Second Appeal is dismissed as there is no acceptance of Substantial Question of Law. No costs.

10.08.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Principal District Judge,
Chengalpet.

2.The Subordinate Judge,
Maduranthakam.



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P.T. ASHA, J,

mps

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