



CRP.No. 1506 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1506 of 2019

and

CMP.No.9840 of 2019

Ramani Bai

.. Petitioner

Versus

1. P.R. Satheeswaran

2. Devendran

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 29.03.2019 in E.A.Sr.No.22620 of 2019 in E.P.No.358 of 2018 in RCOP.No.343 of 2016 on the file of XV Small Causes Court, Chennai.

For Petitioner : Mr.T. Sai Krishnan

For R1 : Mr.V.R. Thangavel

For R2 : Not served with notice. Door Locked



CRP.No. 1506 of 2019

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ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decretal order in E.A.Sr.No.22620 of 2019, dated 29.03.2019 in E.P.No.358 of 2018 in RCOP.No.343 of 2016 on the file of XV Small Causes Court, Chennai.

2. The revision petitioner is a third party in EA.Sr.No.22620 of 2019 and the respondents herein are the respondents in Execution Application.

3. The petitioner/1st plaintiff has filed a suit in O.S.No.2654 of 2015 before the XVI Assistant City Civil Court, Chennai, for redemption of mortgaged immovable properties, execution of cancellation of the mortgage deed and permanent injunction. During the pendency of the suit, the petitioner has filed E.A.Sr.No.22620 of 2019 in E.P.No.358 of 2018 in RCOP.No.343 of 2016 under Order 21, Rule 97 of CPC., r/w Sec.151 CPC., before the XV Court of Small Causes, Chennai, to record the obstruction and terminate E.P.No.358 of 2018. She is the absolute owner



CRP.No. 1506 of 2019

WEB COPY

of the properties and mortgaged the same to one Ramesh, the defendant in the suit and he lawfully brought the said properties for auction without following due process of law. He had sold the property to the 1st respondent/auction purchaser herein. Based upon the same, the 1st respondent filed E.P.No.358 of 2018 against the second respondent. In fact, the first respondent is a tenant under the petitioner herein and he has filed E.P.No.358 of 2018 directing the Judgment-Debtor to vacate and deliver vacant possession of the suit properties and the same was rejected by Executing Court. The second respondent already filed a Memo before the Rent Control Appellate Authority in RCA.No.810 of 2017, stating that compromise was effected between the second respondent and the petitioner and the vacant possession of the properties had been handed over to the petitioner. Hence, the said contention was already raised before the Appellate Authority, who decided the same and rejected the memo filed by the second respondent herein. Challenging the said finding of the trial Court, the petitioner has filed this revision petition.

4. The learned counsel appearing for the revision petitioner submitted that the petitioner has mortgaged the properties to one Ramesh,



CRP.No. 1506 of 2019

WEB COPY

the defendant in the suit, and he has illegally brought the petition premises for auction without following the due procedures and sold the same to the first respondent/Auction Purchaser. Thereafter, the petitioner has filed the suit in O.S.No.2654 of 2015 before the City Civil Court, Chennai, for redemption of mortgage of the properties, permanent injunction and other consequential relief against the mortgagee. During the said proceedings, the defendant sold the properties to the first respondent/auction purchaser and the same was yet to be purchased by the first respondent/decreed holder. Pending the suit, the petitioner has filed an I.A.No. 15471 of 2015 to implead the proposed defendant, namely, P.R.Satheeswaran as the second defendant in the suit. The petitioner, along with proposed second defendant, have filed IA.No.14363 of 2018 before the trial Court and the said application is still pending. Therefore, the alleged auction purchaser/decreed holder is not entitled to proceed with EP.No.358 of 2018 in RCOP.No.343 of 2016. Accordingly, she filed obstruction petition before executing Court to set aside the findings of the trial Court.

5. The learned counsel appearing for the first respondent/auction purchaser submitted that, by invoking Section 69 of the Transfer of



CRP.No. 1506 of 2019

Property Act, he purchased the properties for a total sale consideration of Rs.22,70,000/-, dated 15.07.2015, as per the sale deed, and he is the absolute owner of the properties in the manner known to law.

6. Heard both sides and perused the records.

7. On a perusal of the records, it is seen that the petitioner has filed a suit in O.S.No.2654 of 2015 before the XVI Assistant City Civil Court, Chennai, for redemption of mortgage of the properties, permanent injunction and other consequential relief against one Ramesh, the defendant in the suit. It is categorically admitted by the first respondent that the defendant had sold the properties by way of registered sale deed, dated 15.07.2015 in Doc.No.2233 of 2015 for a total consideration of Rs.22,70,000/- after filing of the suit. The contention of the first respondent's counsel is that after filing of the suit, the first respondent has not deposited any amount before the Trial Court to redeem the mortgage, but the contention of the revision petitioner is that, now she is ready and willing to deposit the amount before this Court.



CRP.No. 1506 of 2019

WEB COPY

8. It is also seen that the petitioner, namely, Ramani Bai, is the original owner of the properties and she had mortgaged her property to one Ramesh (tenant) and subsequently, he has illegally brought the petition premises for auction without following the due procedures contemplated under law, and the said Ramesh sold the properties in favour of the first respondent. The first respondent has filed E.P.No.358 of 2018 in RCOP.No.343 of 2016 before the XV Small Causes Court, Chennai, to direct the Judgment-Debtor to vacate and deliver vacant possession of the suit properties. Subsequently, the petitioner has filed EA.SR.No.22620 of 2019 before the XV Court of Small Causes under Order 21 Rule 97 of CPC., to obstruction and terminate EP proceedings. Pursuant to the same, the petitioner has filed a suit in O.S.No.2654 of 2015 before the City Civil Court, Chennai, for redemption of mortgage of the properties and to declare the sale deed executed in favour of the Decree Holder as null and void and the same is pending. During the pendency of the appeal in RCA.No.810 of 2017, the petitioner had repaid the entire lease amount to the Judgment-Debtor and he has vacated and handed over the vacant possession to the petitioner herein. Therefore, this Court is of the view that suit properties were sold to the auction purchaser/first respondent by the



CRP.No. 1506 of 2019

Judgment-Debtor after filing of the original suit.

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9. Therefore, the finding of the trial Court is liable to be set aside. Accordingly, the impugned order dated 29.03.2019 passed in E.A.Sr.No.22620 of 2019 in E.P.No.358 of 2018 in RCOP.No.343 of 2016 on the file of XV Small Causes Court, Chennai, is set aside.

10. Taking into consideration the above facts and circumstance of the case, the trial Court is directed to dispose of the suit in O.S.No.2654 of 2015 pending before the XVI Assistant City Civil Court, Chennai, within a period of six months from the date of receipt of a copy of this order, after giving an opportunity of hearing for both sides. That apart, the petitioner is hereby directed to deposit a sum of Rs.7,00,000/- [Rupees Seven Lakhs Only) before the trial Court to the credit of O.S.No.2654 of 2015 within a period of two months from the date of receipt of a copy of this order. However, E.P.No.358 of 2018 in RCOP.No.343 of 2016 on the file of XV Court of Small Causes, Chennai, not to be prosecuted till the disposal of suit in O.S.No.2654 of 2015.



CRP.No. 1506 of 2019

WEB COPY

11. Accordingly, Civil Revision Petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

18.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. XV Judge, Small Causes Court, Chennai.
2. The Section Officer, V.R.Section,
High Court, Madras.



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CRP.No. 1506 of 2019

T.V.THAMILSELVI, J.

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C.R.P.No. 1506 of 2019

18.10.2022