



CRP.(NPD).No. 616 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

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

C.R.P.(NPD).No. 616 of 2018

and

CMP.No. 3218 of 2018

K.Sakthivel

.. Petitioner

Versus

K.M. Kuppusamy

...Respondent

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order dated 12.01.2018 made in E.A.No. 01 of 2017 in E.P.No. 02 of 2017 on the file of Sub Court, Kangayam.

For Petitioner : Mr.N. Manokaran

For Respondent : Mr.K.Sukumaran



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ORDER

WEB COPY This Civil Revision Petition is filed to set aside the fair and decretal order dated 12.01.2018 passed in E.A.No. 01 of 2017 in E.P.No. 02 of 2017 by the Sub Court, Kangayam.

2. The revision petitioner/Judgment Debtor/Defendant filed E.A.No.01 of 2017 in E.P.No.02 of 2017 on the file of Sub Court, Kangayam, Tiruppur District. Originally, the suit in O.S.No. 9 of 2001 was filed by the respondent/plaintiff/Decree Holder for recovery of money before the Sub Court, Dharapuram. The said suit was decreed in favour of the respondent/plaintiff herein. To execute the decree for recovery of Rs.1,36,600/- by way of an attachment the respondent/plaintiff has filed E.P.No. 2 of 2017 (previously E.P.No.77 of 2004) before the Sub Court, Dharapuram, for sale of the subject property comprised in Old SF.No.586/A, New SF.No. 586/A2, Vellakoil Village, Kangayam Taluk, Tiruppur District. During pendency of the Execution Proceedings, the petitioner/defendant/Judgment Debtor filed E.A.No.01 of 2017 under Order 21 Rule 89 r/w Section 151 of CPC., seeking to cancel the auction through Court conducted on 03.04.2007. In that Execution Application as the



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petitioner/Judgment Debtor has failed to pay the decree amount, the property belongs to the Judgment Debtor was brought in auction sale on 03.04.2007. In that auction the plaintiff himself participated and deposited the auction amount into the Court. Thereafter, the sale certificate was issued in his favour. During the pendency of the execution proceedings, the petitioner/defendant filed an application to set aside the sale in E.A.No. 1 of 2017 and the same was dismissed by the Sub Court on the ground that he has not approached the Court in time. Aggrieved by the said order, the petitioner/defendant has preferred this revision.

3. When the matter is taken up for hearing today, the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent would submit that the disputes between the parties have been amicably settled and filed a joint memo of compromise dated 29.11.2022. The joint compromise memo reads as follows:-

"1. The respondent filed O.S.No. 9 of 2001 on the file of Sub Court, Dharapuram, against the petitioner for recovery of money and the said suit was decreed on 13.08.2001 for Rs.1,12,100/-. The respondent/DH filed



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EP.No.77 of 2004, later transferred and renumbered as EP.No. 2 of 2017 on the file of the Ld. Sub Court, Kangayam to execute the decree for recovery of Rs.1,36,600/- by way of an attachment and sale of the subject property measuring an extent of 3024 sqft., comprised in Old SF.No.586/A, New SF.No.586/A2, Vellakoil Village, Kangayam Taluk, Tiruppur District.

2. The Ld. Execution Court had conducted a sale on 03.04.2007, in which, the respondent had participated and purchased the property in the said court auction sale. In the meantime, one S.K. Rajendran filed CRP.No. 1304 of 2007 before this Hon'ble Court and obtained an order of stay on 23.04.2007. Later, the said CRP No.1304 of 2007 was dismissed on 06.06.2011.

3. After the disposal of CRP.No. 1304 of 2007, the matter was listed for confirmation of sale in EP.No. 2 of 2017 (Previously EP.No. 77 of 2004) on 30.06.2011. In the meantime, the petitioner has filed E.A.No. 1 of 2017 under Order 21 Rule 89 of CPC., to set aside the sale held on 03.04.2007. It was dismissed, by order dated 12.01.2018 and the aggrieved petitioner/JD has filed the above CRP No. 616 of 2018 before this Hon'ble Court.

4. Pending the above CRP.No. 616 of 2018, the petitioner/JD/Defendant and the respondent/DH/plaintiff



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have come forward to settle the disputes between them amicably. In view of the same, the petitioner/JD has paid a total sum of Rs.18,00,000/- (Rupees Eighteen Lakh Only) to the respondent/DH on 14.11.2022 towards full and final settlement of the claim of the respondent/DH in E.P.No.2 of 2017 in O.S.No. 9 of 2001.

5. The petitioner and the respondent submit that in view of the above payment of Rs.18,00,000/- (Rupees Eighteen Lakh Only) paid to the respondent/DH, it is mutually agreed to set aside the sale held on 03.04.2007, which was confirmed on 03.09.2018 in E.P.No.2 of 2017.

6. In view of the above terms and conditions agreed and acted upon between the parties, the entire claim made by the respondent/DH/plaintiff in EP.No. 2 of 2017 in O.S.No. 9 of 2001 stood discharged. Thus, EP.No.2 of 2017 in O.S.NO. 9 of 2001 is dismissed as withdrawn in terms of this Joint Memo of Compromise.

7. The petitioner/JD and the respondent/DH pray this Hon'ble Court to treat this Joint Memorandum of Compromise as part and parcel of the order to be passed in CRP.NO.616 of 2018 on the file of this Hon'ble Court.

It is, therefore, prayed that this Hon'ble Court may be pleased to record the above terms and conditions of this Joint Memo of Compromise duly agreed and signed by both the parties, set aside the sale held on 03.04.2007 in E.P.No.



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2 of 2017 in O.S.No. 9 of 2001 on the file of the Ld. Sub Court, Kangayam and communicate the same to the Sub Registrar, Vellakovil and pass such further order as this Hon'ble deems fit and proper in the circumstances of the case and thus render justice.

4. As per the terms of the Joint Memorandum of Compromise Memo the petitioner/Judgment Debtor has paid a total sum of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) to the respondent/Decree Holder on 14.11.2022 towards full and final settlement of the claim of the respondent/DH in E.P.No.2 of 2017 in O.S.No. 9 of 2001. The respondent/plaintiff has agreed to receive Rs.18,00,000/- from the Judgment Debtor and accordingly, he has agreed to set aside the sale which was held through Court auction on 03.04.2007 in E.P.No.2 of 2017 in O.S.No. 9 of 2001. As per the terms of Joint Compromise Memo, both parties have admitted the same and the respondent/plaintiff has received a sum of Rs.18,00,000/- from the petitioner/Judgment Debtor. Accordingly the matter has been settled between the parties amicably, the property belongs to the defendant was auctioned through Court sale on 03.04.2007 is hereby set aside and the order of this Court may be communicated to the Sub



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Registrar, Vellakovil and the same may be recorded in the Book of Register maintained by the Sub Registrar Office, Vellakoil.

5. Further, the Executing Court is directed to communicate the order of cancellation of the sale held on 03.04.2007 in favour of the respondent/plaintiff and concerned Registrar may endorse the same in the book of Register which is maintained by the Revenue Register. After receiving the order of this Court, the jurisdictional Sub Registrar is directed to make necessary entries in the book of Register and to restore the property in favour of the petitioner/Judgment Debtor, namely, Sakthivel. The terms of the Joint Memorandum of Compromise, dated 29.11.2022 shall form part of the decree.

6. In view of the above, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

29.11.2022

msm

Speaking Order : Yes/No



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1. The Sub Court, Kangayam.
2. The Sub Registrar Office, Vellakoil.
3. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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