



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.03.2022
DELIVERED ON	13.04.2022

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.2334 of 2016

and

C.M.P. (MD)No.10773 of 2016

1.Parthasarathy
2.Menaka
3.Saraswathi

...Revision Petitioners/Appellants

Vs.

1.Chinnasamy
Palanichamy (Died)
2.Selvaraj
3.Valliathal
4.Chitra

...Respondents/Respondents/Defendant/
Plaintiff/3rd Party Auction Purchaser

PRAYER: Civil Revision Petition under Section 115 of the Civil Procedure Code, to call for records and set aside the order, dated 10.06.2016 passed in C.M.A.No.1 of 2015 on the file of the learned Principal District Judge, Dindigul, setting aside the order, dated 29.04.2010 passed in E.A.No.58 of 2011, in E.P.No.84 of 2005 in OS 359 of 2000 on the file of the learned Subordinate Judge, Palani.

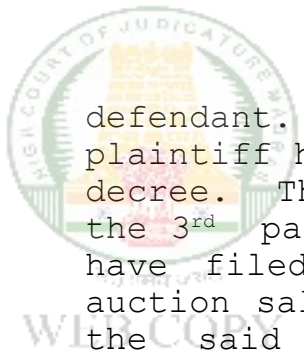
For Petitioners :Mr.S.Sadash Kumar
For R-2 :Mr.S.Meenashi Sundaram,
Senior Counsel, for
N.GA.Natraj
For R-1,3 & 4 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 10.06.2016 in C.M.A.No.1 of 2015 passed by the learned Principal District Judge, Dindigul, setting aside the order, dated 29.04.2010 in E.A.No.58 of 2011, passed by the learned Subordinate Judge, Palani.

2.The parties are referred to as per the rank mentioned before the Court below.

3.Originally, the plaintiff has filed a suit in O.S.No.359 of 2000 for recovery of money on the basis of pro-note executed by the
<https://hcservices.ecourts.gov.in/hcservices/>



defendant. The suit was decreed on 24.06.2005. Thereafter, the plaintiff has filed a petition in E.P.No.84 of 2005 for execution of decree. The sale was ordered and the subject property was sold to the 3rd parties on 27.01.2010. The 3rd parties/ revision petitioners have filed an application in E.A.No.133 of 2010 to cancel the auction sale. The said E.A. was dismissed on 29.04.2010. Against the said dismissal order, dated 29.04.2010, the revision petitioners have preferred an appeal in C.M.A.No.1 of 2015. The said C.M.A. was also dismissed. Against the said dismissal order, this Civil Revision Petition has been allowed.

4.Heard on either side and perused the material documents available on record.

5.The Civil Revision Petition is filed on the ground that the Court below ought to have allowed the C.M.A.No.1 of 2015 on the sole ground that the revision petitioners have deposited entire decree amount together with interest and Costs and the same was withdrawn by decree holder. The Court below ought to have come to the conclusion that both the decree holder as well as auction purchaser has committed fraud before Court below even after knowingly well about the partition suit and charge decree. The Court below have failed to understand that the auction purchaser has only rights to receive cost amount from the revision petitioners as per Section 199 (2) of the Civil Rules of Practice.

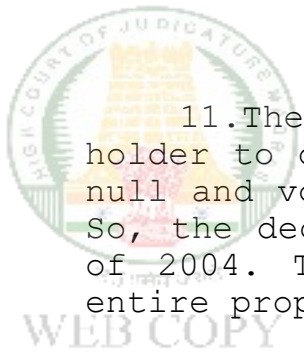
6.The Revision Petitioners/Appellants/Petitioners have claimed rights based on the decree passed in O.S.No.1109 of 2004.

7.The suit in O.S.No.1109 of 2004 was filed by the wife and children of the Judgment Debtor in this case for maintenance and partition. The Judgment debtors were set exparte and pre-decree was passed on 29.09.2004. The petitioners have not filed any final decree petition till now.

8.The decree holder has filed a suit in O.S.No.106 of 2007 to cancel the Judgment and decree and the same was dismissed. The facts stated in the application in E.A.No.133 of 2010 which was not denied by the Decree holder in his counter. Already there was decree for partition and charge decree also passed in O.S.No.1109 of 2004. The decree is still in force.

9.The decree holder very well known about the pre decree and charges and without impleading the wife and children of the Judgment debtor filed an execution petition and bring the properties on sale.

10.The revision petitioners have filed the petition in E.A.No.133 of 2010 in E.P. No.84 of 2005 to cancel the sale which was held on 27.01.2010.



11.The suit in O.S.No.106 of 2007 was filed by the decree holder to declare the Judgment and decree in O.S.No.1109 of 2004 as null and void and the same was dismissed for default on 13.02.2008. So, the decree holder has knowledge about the decree in O.S.No.1109 of 2004. The decree holder has filed an execution petition for entire property including the shares of the minors.

12.The decree holder has fraudulently suppressed the Judgment and Decree in O.S.Nos.1109 of 2004 and 106 of 2007.

13.Without considering the Judgment and Decree in O.S.Nos.1109 of 2004 and 106 of 2007 both the Courts below have erred in dismissing the E.A. and C.M.A. So, this Court is inclined to interfere with the order in C.M.A.No.1 of 2015.

14.Finally, this Civil Revision Petition is allowed by setting aside the order, dated 10.06.2016 in C.M.A.No.1 of 2015 on the file of the learned Principal District Court, Dindigul and E.A.No.133 of 2010 in E.P.No.84 of 2005 on the file of the learned Subordinate Court, Pazhani. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

To

1.The Principal District Judge,
Dindigul.

2.The Subordinate Judge,
Pazhani.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-18889[F] dated 18/04/2022)

C.R.P. (MD)No.2334 of 2016

13.04.2022

RK(28/04/2022) 3P 6C