



CRP.10/2007, CRP(NPD).1111 of 2006
and S.A.No.1607 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2022

DELIVERED ON : 02.01.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP.No.10 of 2007
and CRP.(NPD).No1111 of 2006
and S.A.No.1607 of 2011.

CRP.10 of 2007

1.D.Subhash

2.Laveena

..Petitioners/EA Petitioners/third parties
Vs.

1.V.Natarajan

..Respondent 1 /Respondent 1
/EP Petitioner/Plaintiff -Decree holder

2.T.V.Dhamodaran

..Respondent 2/EA Respondent 2/
Defendants/Judgment-debtor.

CRP.1111 of 2006

V.Natarajan

..Petitioner/plaintiff

Vs

1.D.Subash

2.Laveena

..Respondents 1 and 2/3rd parties

3.T.V.Dhamodharan

..3rdrespondent/Defendant/2nd respondent.



CRP.10/2007, CRP(NPD).1111 of 2006
and S.A.No.1607 of 2011

S.A.No. 1607 of 2011 :-

V.Natarajan

..Appellant/4th defendant

Vs

1.S.Saravanakumar

2.K.Dhandapani

3.T.V.Damodaran

4.M/s.Mangal Yarns

Rep. By its Partner Jayanthilal

5.M/s.Mangal Distributors

Rep. By its Partner Jayanthilal

6.D.Subash

7.Laveena

..Respondents/

Plaintiffs/Defendants

1, 2, 3, 4, 5, 6 and 7.

For Petitioners

in CRP.10/2007 &

For R1 and R2 in CRP.1111/2006 :: Mr.N.Damodaran

For Petitioner

in CRP.1111/2006

& For appellant

in S.A.No.1607 of 2011

For R1 in CRP.10/2007

:: Mr.S.Senthil Kumar

For R1 to R7 in SA.1607/2011

– No appearance.



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Prayer in CRP.10 of 2007 : CRP filed against the fair and decretal order of the Second Additional Subordinate Judge's Court at Coimbatore, dated 20.02.2006 in E.A.No.511 of 2003 in E.P.No.20 of 1997 in O.S.No.851 of 1996.

Prayer in CRP.1111 of 2006 : CRP filed against the fair and decretal order of the Second Additional Subordinate Judge's Court at Coimbatore, dated 20.02.2006 in E.A.No.511 of 2003 in E.P.No.20 of 1997 in O.S.No.851 of 1996.

Prayer in S.A.No.1607 of 2011 :-Second appeal is filed as against the order passed in A.S.No.42 of 2008 on the file of First Additional District Judge, Coimbatore.

COMMON JUDGMENT

CRPs.10 of 2007 and 1111 of 2006 arise out of an order in an application under Section 47 CPC. The revision petitioner in CRP.No.10 of 2007 is the petitioner in Section 47 application. The revision petitioner in CRP.1111 is the court auction purchaser in the execution proceedings in the said suit.



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2. O.S.No.236 of 1996 was filed by S.Saravanakumar/Plaintiff on the file II Additional Sub-Judge at Coimbatore for recovery of money from T.V.Damodaran / 1stdefendant in the suit.

3. Pending suit, the plaintiff obtained an order of attachment in I.A.No.266 of 1996. O.S.No.236 of 1996 was decreed on 05.12.1996 and the decree holder filed Execution Petition for the sale of attached property.

4. The attached property was sold on 24.04.2002 to one V.Natarajan. (Petitioner in CRP.1111/2006) and the sale was confirmed on 14.08.2002. The Revision Petitioner become the auction purchaser.

5. Pending attachment, the Judgment debtor has sold the property to one Ravindar Kour and H.S.Anand on 27.05.1998. i.e., after the attachment of the property by the court. In turn, the said Ravindar Kour and H.S.Anand sold the property to D.Subash and Leena on 7.4.1999.



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After subsequent transfers, the Revision Petitioner in CRP.No.10 of 2007 became the last buyer. He filed E.A.No.511 of 2003 under Section 47 CPC to set aside the sale and claimed to be a bonafide purchaser.

6. The said E.A.No.511 of 2002 has been filed by D.Subash and Laveena in E.P.No.20 of 1997 in O.S.No.851 of 1996 praying to declare that sale of the property on attachment dated 24.04.2002 as null and void.

7. The claim in EA is that the petitioners in EA has purchased a part of the property on 07.04.1999 from one Ravindar Kaur. The petitioners in EA are husband and wife. The 2nd petitioner/wife said to have purchased another portion of the suit property from Anand on the same day ie., 07.04.1999. According to the EA petitioners, they purchased the suit property by registered sale deed and verified that there was no encumbrance. EP.Nos.125/2000, 126/2000, 767/2000 and 768 of 2000 filed against Mangal Distributor are pending and at that stage, without adding the EA petitioners, auction has been conducted and the property has been sold to 3rd parties and therefore, the auction sale has to be



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declared as null and void.

8. In the said E.A., the auction purchaser would submit that the said property is valued at Rs.6,25,000/- and from 16.09.1998 auction has been conducted and since nobody was willing to buy the said property, the auction rate has been reduced and after pasting the said auction details on the notice board, around 8 times, the property was auctioned. Even then, none came forward to buy the property. Subsequently, on 14.08.2002, the property was purchased by him for Rs.2,85,000/-. The said sale was confirmed on 14.08.2002. However, EA petitioners would claim that they entered into sale agreement on 07.04.1999 which date was after the attachment of property on 17.03.1997. Ameena has valued the property including the building in the property. The said EA was dismissed by observing that the so called purchase by the EA petitioners was after the auction and hence, the purchase of the property by the EA petitioners was not sustainable. In such view, the EA has been dismissed.

9. As against the said dismissal order passed in EA., the revision



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petitioner who is the auction purchaser, as against the observations made against his auction purchase, has approached this court in CRP.1111 of 2006.

10. On the other hand, the EA petitioners who claimed that they purchased the said suit property on 07.04.1999 i.e., after attachment of property by the court, has filed CRP.10 of 2007.

11. The learned Judge found that EA petitioners purchased the suit property pending attachment and hence, cannot claim any better interest than the judgment debtor. All claims arising in the suit are enforceable against the attached property.

12. The contention of the learned counsel for the petitioners/EA petitioners/petitioners in CRP.10/2007 is that there was a prior agreement of sale, before the attachment and hence the sale will relate back and the property cannot be proceeded against.

13. A perusal of Section 47 application filed by the revision



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petitioner in CRP.10/2007 shows that no such plea of prior agreement was taken. No such agreement was filed or marked in evidence. Besides the alleged agreement was unregistered deed.

14. The other contention is that judgment debtor executed a sale deed on 27.05.1998 long after the attachment in order to defraud the rights of the creditors and that the revision petitioners did not file any evidence in the court.

15. It is further contended that the judgment debtor was facing several suits and attachments in the hands of his credits and at that relevant time, such an agreement entered into cannot be given relevance as the recitals in the sale deed dated 27.05.1998 cannot be inferred as agreement.

16. Learned counsel for the Revision petitioner in CRP.1111/2006 relied on the following decisions:-

(1) Sarathammal Vs. Sangaralingam in SA.858 of 2010 dated 24.11.2020.



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(2) G.R.Ramasethu Vs. K.R.Athappa Chettiar and others reported in (1988) 2 MLJ149.

17. According to the learned counsel for the revision petitioner in CRP.1111/2006 (auction purchaser), defendants 5 and 6 filed CRP.10 of 2007 who said to have entered into sale agreement and purchased the suit property and claimed to have been in possession of sale deed in their names.

18. According to the learned counsel, the suit was only to recover their money due under the decree from and out of the property purchased by defendant 4 in court auction. The courts below held that the auction was in “fraud of creditors”. So the rights of the parties in CRP.10 of 2007 has to be decided in CRP. 10 of 2007.

19. The 4th defendant auction purchaser filed SA.1607 of 2011 challenging the judgment and decree passed in A.S.No.42 of 2008. According to the learned counsel, since the suit was only by creditors, the appellant settled the dues of the creditors and consequently, a



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compromise was made and filed in court. By the said compromise, the plaintiffs withdraw the suit as he had been paid off and hence the judgment and decree in O.S.No.586 of 2005 were to be set aside.

20. After the compromise was recorded, Defendants 5 and 6 filed applications to reopen the Second Appeal and hence SA.1607 of 2011 is reopened and now taken up along with CRPs.

21. It is submitted that since compromise was recorded, D5 and D6 who are EA petitioners have no locus standi to seek for quashing the compromise in SA.1607 of 2011.

22. Admittedly, against the first defendant [T.V.Damodaran] in O.S.No.586/2005, decree had already been obtained by plaintiffs viz., Saravana Kumar, Dhandapani and Mangal Yarns. While the said fact has not been disputed by the first defendant – T.V.Damodaran, suit in O.S.No.851 of 1996 has been filed by the 4th defendant viz., Natarajan against the first defendant for recovery of a sum of Rs.2 lakhs with



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interest, wherein, exparte decree was obtained. Thereafter, execution proceedings was continued in E.P.No.20 of 1997. The order passed in E.A.No.511 of 2003 filed by third party as against E.P.No.20 of 1997 in O.S.No.851 of 1996, has been challenged in both Civil Revision Petitions and now both the CRPs and Second Appeal filed by the auction purchasre are before this court.

23. The learned Judge, dismissed the E.A.No.511 of 2003 filed by the 3rd parties who claimed to be the subsequent purchasers of the suit property and also claimed that they purchased a part of the property on 07.04.1999 from one Ravindar Kaur.

24. The findings of the learned Judge while dismissing E.A.No.511 of 2003 by order dated 20.02.2006 is that during the attachment passed by the court in the suit proceedings filed by the first and second plaintiffs in O.S.No.223 of 1996, Ex.B.1 and Ex.B.4 sale deeds have been executed. It clearly show that the suit properties were sold by the first



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defendant under Ex.B.1 and B.2 on 27.5.1998, thereafter, 5th and 6th defendants purchased the property under Ex.B.3 and Ex.B.4. The sales were made while the attachments were in force. While the execution proceedings were pending, in order to bid and set off the suit claim the property in respect of O.S.No.851 of 1996 has been auctioned, therefore, the said auction is void. The learned Judge held that the action of the first defendant who had the intention to sell the single suit property in respect of all the suit claims by bid and set off the claims against the parties is not sustainable. The learned Judge also held that once the property has been attached and when the attachment was in force, the conveyance of the property and sale of such property to the petitioners in E.A., is not valid sale and as such rejected the claim of the 3rd parties who said to have purchased the property from one Anand and Ravindar Kaur.

25. This court does not find any infirmity in the above said findings. Accordingly, the dismissal of the E.A.No.511 of 2003 in E.P.No.20 of 1997 is O.S.No.851 of 1996, is well founded and no



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interference warranted at the hands of this court. Therefore, the Civil Revisions Petitions are dismissed.

26. As far as the Second Appeal is concerned, firstly in the trial court, suit has been decreed in favour of the plaintiffs. The lower appellate court has clearly held that in O.S.No.586 of 2005, decree holder filed petition to reduce the upset price from 6,25,000 to Rs.3 lakhs. At the same time, in O.S.No.851 of 1996, after judgment, E.P.No.20 of 1997 has been filed on 24.01.1997. In the first hearing on 12.03.1997, judgment debtor was called absent and set exparte. Thereafter EP continued for further proceedings.

27. In O.S.No.586 of 2005, advance hearing petition was filed by the decree holder to advance the hearing from 07.12.1998, wherein, no objection was endorsed by the judgment debtor/first defendant. Again, petition was filed for reducing the upset price from 6 lakhs to 3 lakhs. , thereafter upset price was reduced to Rs.5,50,000/-.



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28. Again advance hearing petitions filed to advance the EP from 24.02.1989, wherein, no objection was given by first defendant, thereafter, upset price was reduced to Rs.4 lakhs. In another application, further reduced from Rs.4 lakhs to Rs.2,50,000/-.

29. In the above application, first defendant endorsed no objection. 4th defendant Natarajan participated in the bid and he was declared as successful bidder in auction on 13.06.2001 for a sum of Rs.2,85,300/-. Only Rs.100/- was shown in difference in auction on 13.06.2001.

30. But the 4th defendant has not deposited the amount in time. Against the property was brought for sale, at that time, 4th defendant applied permission under Ex.A.25 to purchase the property. In the said application, first defendant remained exparte. The learned Judge held that the permission sought by 4th defendant for sale of the property on the same upset price under Ex.A.23 and Ex.A.26 would clearly go to show that first defendant has all along sailing with 4th defendant from the very



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beginning of the suit till the entire proceedings.

31. The learned First Appellate Court held that as per Ex.B.1 and Ex.B.2 sale deeds dated 27.05.1998 first defendant already conveyed the property when the attachment was in force. Due to such conveyance, first defendant had no saleable interest in the suit properties. In spite of such sale, again admitting the suit claim within a month and giving no objection to reduce the upset price from Rs.6,25,000/- to Rs.2,85,000/- would clearly indicate that the first and 4th defendants have colluded with each other.

32. The lower appellate court has categorically pointed out that, on 04.12.2002, the same property was sold as mentioned in E.P.No.139 of 1996 for a sum of Rs.15,10,000/-. But subsequently, the said sale was set aside at the instance of the auction purchaser himself on the ground that the property was already auctioned on 24.04.2002. It was noted that only 8 months difference between two auction whereas the sale price show in huge in a subsequent auction.



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33. The lower appellate court found that the facts above stated cannot be ignored altogether. The property was shown as a vacant site in a sale proclamation. Even 4th defendant in his evidence before auction sale stated that he was well aware of the attachment of the suit properties and he even applied encumbrance certificate. But he himself admitted at the time of auction sale, that in the suit property, two floors were available and he also inspected the suit property.

34. The Lower Appellate Court given a finding the suppression earlier and reducing the upset price from huge sum to Rs.2,85,000/- is nothing but fraudulent act and they acted only to defeat the rights of other creditors. The learned Judge held that if this is not termed as a fraud, nothing else could be called as a fraud that too with the support of the court.

35. The conduct of the parties particularly 1st defendant and 4th defendant clearly expose that they played fraud on the court in



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defeating the rights of the creditors who had already obtained the decree against the first defendant. The entire act of the first and 4th defendant is nothing but fraud which vitiates entire proceedings.

36. The learned First Appellate Court Judge observed that even after sale of the property by the first defendant, he participated in the E.P. proceedings and he was so generous in giving no objection to reduce upset price from the huge amount. The guideline value fixed by the plaintiffs also clearly show that the property is having huge value. The conduct of the 4th defendant in bidding and setting off the amount himself also clearly show that the entire proceedings have been done only to defraud the creditors.

37. The learned First appellate Judge held that the first creditors/plaintiffs are certainly entitled to bring the suit to declare the fraudulent activities. On the question of Limitation, the learned First Appellate Court Judge held that merely on the facts, the fraudulent



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activities cannot be legalized and therefore, the admission of the plaintiff at any stretch of imagination will destroy the law of limitation.

38. With the above findings, the learned First Appellate Court Judge, confirmed the judgment and decree passed in O.S.No.586 of 2005. The reasonings of the learned Judge, First Appellate Court is well founded. I do not find any infirmity in the judgment passed in A.S.No.42 of 2008. Accordingly, the Second Appeal is dismissed.

39. In the result, CRP.Nos.10/2007, 1111/2006 and S.A.No.1607 of 2011 are dismissed. No costs.

02.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
nvsri



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To

- 1.The Second Additional Subordinate Judge, Coimbatore
2. The First Additional District Judge, Coimbatore.
- 3.The Section Officer, V.R.Section
High Court of Madras.



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