



C.M.A.No.686 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.M.A.No.686 of 2015

K.N.Balan

.. Petitioner

Vs.

1.A.Chandran

2.G.Senthil Murugan

3.R.Sekar

.. Respondents

PRAYER : Civil Revision Petition is filed under Order 43 Rule 1(J) of Civil Procedure Code, to set aside the Fair and Decreetal order, dated 19.12.2014 made in E.A.No.74 of 2014 in E.P.No.10 of 2009 in O.S.No.29 of 2006 on the file of the I Additional District Judge, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.A.Prabakaran for R1 and R2

: Mr.M.V.Venkateshan for R3
Senior Counsel for Mr.V.V.Sathya



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J U D G M E N T

The suit had been filed in O.S.No.29 of 2006 against the appellant by respondents 1 and 2 who are represented by Mr.A.Prabakaran. It ended in a decree on 16.09.2008. As per the decree, the appellant was called upon to refund the sum of Rs.10,00,000/- (Rupees ten lakhs only) received towards advance amount altogether with the interest of 6 % per annum. On default to honour the first clause of the decree, charge was created over the suit schedule mentioned property.

2. The appellant did not honour the decree. In order to execute the decree, E.P.No.10 of 2009 was presented under Order 21 Rule 11(2) of CPC. The purpose of the said execution was to bring the property for sale. Initially, the upset price was fixed at Rs.30,00,000/- (Rupees thirty lakhs only). Challenging the same, CRP.No.710 of 2010 came to be filed before this Court. This Civil Revision Petition was dismissed on 06.04.2011.

3. Thereafter, the children of the Judgement debtor filed an application under Order 21 Rule 58, which came to be dismissed by the



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Trial Court against which the Civil Miscellaneous Appeal was presented in CMA.No.3002 of 2012. This Court allowed the appeal and remanded the matter to the learned executing Court for fresh disposal in accordance with law. This was in and by way of order in CMA.No.3002 of 2012, dated 10.10.2012.

4. On remand, the petition filed under Order 21 Rule 58 was dismissed on 01.03.2013, against which another Civil Miscellaneous Appeal was filed before this Court in CMA.No.1610 of 2013. The said appeal was dismissed on 20.12.2013. Pending the appeal, the property was sold to the 7th respondent herein. He purchased the property for a sum of Rs.31,00,000/- (Rupees thirty one lakhs only). After the sale was confirmed in favour of the auction purchaser, he moved an application for take possession of the property.

5. In the mean time, the appellant/Judgement debtor filed an application under Order 21 Rule 97 of CPC seeking to obstruct the decree. The learned Trial Judge dismissed the same in and by way of an order dated 19.12.2014. Challenging the same, the present Civil



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Miscellaneous Appeal has been filed.

6. Heard Mr.M.Guruprasad, learned counsel appearing for the petitioner and Mr.A.Prabakaran, learned counsel appearing for 1st and 2nd Respondents and Mr.M.V.Venkateshan, Senior Counsel representing Mr.V.V.Sathya appearing for 3rd Respondent. I have gone through the records.

7. It is not in dispute that the appellant before me, Mr.K.N.Balan is a Judgement debtor in O.S.No.29 of 2006. A Judgement debtor is not entitled to obstruct the decree. The petition for obstruction as per Order 21 Rule 97 can be filed only by the decree holder or by the auction purchaser, when they are obstructed from taking possession of the property. An obstruction should always be by a third party and not by a Judgement debtor. The narration of the facts would show that the Judgement debtor has put all of his efforts in nullifying the sale made by the Court. As a last resort, he has filed an application under Order 21 Rule 97. The application under Order 21 Rule 97 is not maintainable. I have no other option to confirm the order passed by the I Additional



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District Judge, Erode in E.A.No.74 of 2014 in E.P.No.10 of 2009 in
O.S.No.29 of 2006.

8. In fine, CMA.No.686 of 2015 is dismissed. No costs.

20.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
MKN2/VEDA

To
The I Additional District Judge, Erode.



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V.LAKSHMINARAYANAN,J.

MKN2/VEDA

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