



C.R.P.No.1361 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1361 of 2015

and

M.P.No.1 of 2015

K.N.Balan

.. Petitioner

Vs.

1.A.Chandran

2.G.Senthil Murugan

K.Nachimuthu Gounder (Died)

3.P.Maheswari

4.P.Indiradevi

5.Indhirani

6.Minor.G.Dhanya

Represented by Natural Guardian

Mother Indhirani

7.R.Sekar

.. Respondents

PRAYER : Civil Revision Petition is filed under section 115 of Civil Procedure Code, to set aside the Fair and Decreetal order, dated 22.12.2014 made in E.P.No.10 of 2009 in O.S.No.29 of 2006 on the file of the I Additional District Judge, Erode.



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For Petitioner : Mr.M.Guruprasad

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

: Mr.M.V.Venkateseshan for R7
Senior Counsel for Mr.V.V.Sathya

: Not Ready in Notice for R3

: Served, No Appearance for R4, R5

: R6 Minor Represented by R5

ORDER

This Civil Revision Petition arises against E.P.No.10 of 2009. The petitioner before me is a Judgment debtor. He suffered a decree in O.S.No.29 of 2006 on 16.09.2008. Pursuant to the decree, E.P.No.10 of 2009 was filed for the purpose of attachment and sale of the property charged under the decree.

2. An auction sale was held on 24.04.2013 and the property was purchased by the 7th respondent. The 7th respondent deposited a sum of Rs.7,75,000/- (Rupees seven lakhs and seventy five thousand only) less the poundage charges of Rs.93,030/- (Rupees ninety three thousand and thirty only). That left a balance of Rs.23,35,000/- (Rupees twenty three

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lakhs and thirty five thousand only) and amount towards stamps to be deposited.

3. The 7th respondent was unable to deposit the remaining amount within the time fixed by Code of Civil Procedure since a stay was operating in CMA.No.1610 of 2013. The stay stood vacated, after the dismissal of the appeal. A memo was filed by the auction purchaser stating that the appeal had been dismissed and he should be permitted to deposit the remaining amount of 75 %. The Court went through the order of this Court, dated 20.12.2013 and directed issuance of challan on 30.01.2014.

4. The counsel for the auction purchaser received a challan on 03.02.2014 but he did not pay the entire amount on that day. What was deposited was only the balance 75 % of the auction amount. As per Order 21 Rule 85 as amended by this Court, an auction purchaser should not only deposit the purchase money within a period of 15 days from the date of sale but he should also deposit the general stamps required for registration of sale certificate to be issued under Order 21 Rule 94 of



5. Though the auction purchaser had brought to the notice of the Court that the stay had been vacated on 20.12.2013 and obtained challan on 03.02.2014, he did not pay the amount towards general stamps till 18.07.2014, the rule is mandatory. The auction purchaser will also have to deposit the general stamps required towards registration of the certificate and the balance of sale consideration.

6. It has been held by the Supreme Court in ***Gas Point Petroleum India Limited v. Rajendra Marothi and others*** in **2023(6) SCC 391**, that failure to deposit the amounts as required under Order 21 Rule 85 nullifies the sale and the purchase under the Court auction becomes null and void. This position of law is settled as early as in ***Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud*** case reported in ***AIR 1954 SC 349***.

7. A learned Single Judge, taking note of this position of law, had applied the Judgment of the Madras High Court in ***Subbammal Vs. P.Gurusamy Thevar and others*** case reported in ***AIR 1974 Mad. 278*** and



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set aside the sale. He held that deposit of the purchase money together with the amounts towards general stamps is mandatory and in case the amounts are not deposited, the sale held by the Court is null and void. The judgment of the learned Single Judge of this Court in ***Velayutha Pandian Vs. Vallisundari*** is reported in ***2019(1) MWN (Civil) 278***.

8. At this stage, Mr.M.V.Venkateshan, learned senior counsel appearing for the 7th respondent submitted that it may be verified if Order 21 Rule 85 of the CPC as amended by the Madras High Court continues to be in force. On the submission of the learned counsel, reference was made to the Rule committee and it was represented by the Administrative Officer of the Madras High Court that the said Rule continues to be in force.

9. The Rule being in force and the auction purchaser admittedly having not paid the amounts towards general stamps within a period of 15 days from the date of auction, the sale is void. I am left with no other option than to declare that the sale as null and void. I was inclined to pass an order directing the executing Court to order fresh auction of the



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property.

10. At this stage, Mr.M.Guruprasad, learned counsel of the Judgment debtor submitted that his client is willing to pay the entire amount due under the decree in O.S.No.29 of 2006. According to him, the entire dues comes to Rs.26,52,355/- (Rupees twenty six lakhs fifty two thousand three hundred and fifty five only). The counsel for the decree holder is present. He is willing to receive the demand draft drawn in favour of the decree holders. Mr.M.Guruprasad has handed over the drawn demand drafts for following sums :

- (1)Rs.7,02,355/- drawn in demand draft No.711000 issued by South Indian Bank Limited, Bhavani Branch.
- (2)Rs.9,50,000/- drawn in demand draft No.006125 issued by HDFC Bank, Cutchery Road, Erode Branch.
- (3)Rs.7,00,000/- drawn in demand draft No.597418 issued by State Bank of India, Erode Branch.
- (4)Rs.3,00,000/- drawn in demand draft No.597419 issued by State



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Bank of India, Erode Branch.

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11. In fine, the entire decree amount has been paid by way of demand drafts and therefore nothing remains to be adjudicated in the Execution Petition. The Judgment debtor having paid the entire amount due under the decree and the said amount having been received by the decree holder, full satisfaction is recorded. The executing Court shall record the same and pass appropriate orders terminating the Execution Petition.

12. The auction purchaser has deposited the amount into Court in two phases (i.e.,) on 25.04.2013 and 04.02.2014. He has also deposited the amounts towards the general stamps on 05.08.2014. Since the sale itself is held to be null and void, the auction purchaser is entitled to take refund of the amount deposited by him.

13. The counsel for the decree holder as well as the counsel for the Judgment debtor have stated that they have no objection for the withdrawal of the amount by the auction purchaser. Therefore, the executing Court is directed to return the amounts deposited by the



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auction purchaser without insisting on “No Objection” from either the judgment debtor or the decree holder.

14. The Judgment debtor has successfully dragged on the matter from 2013 till date. For the default in payment of general stamps, the sale has been set aside. That does not mean the auction purchaser should suffer on account of the recalcitrant attitude shown by the Judgment debtor. It is true that the Judgment debtor settled the entire decree amount today but the auction purchaser has been denied the amount that he has deposited from the year 2013 to till date. Therefore, I quantify the costs at Rs.1,50,000/- (Rupees one lakh and fifty thousand only) which the Judgment debtor shall pay to the auction purchaser within a period of four (4) weeks from today.

15. In case, the Judgment debtor does not pay the amount, there shall be a charge in favour of the auction purchaser for an amount of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) over the suit schedule mentioned property. The amount shall be paid directly to the auction purchaser on or before 31.10.2023. The payment shall be made



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either by cheque or through demand draft or RTGS/NEFT. The payment which shall be duly acknowledged and the receipt shall be given by the auction purchaser.

16. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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.

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and

M.P.No.1 of 2015

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