



C.R.P.No.130 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.130 of 2017
and C.M.P.No.618 of 2017

Sakthivel

... Petitioner

Vs.

1. Kuppusamy Mudaliar
2. Kanthamani
3. Arumugam (died)
4. Saraswathi
5. Murugan
6. Selvi
7. Panchali
(Respondents 4 to 7 brought
on records as LR's of the
deceased R3 Viz., Arumugam
vide Court order dated 08.06.2022
made in C.M.P.No.10617 of 2020
in C.R.P.No.130 of 2017)

... Respondents

Prayer :- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order and decretal order dated 28.09.2016 passed in E.A.No.616 of 2009 in E.P.No.398 of 2006 in O.S.No.440 of 2004 by the learned Principal District Munsif, Tindivanam Taluk, Villupuram District and allow this Civil Revision Petition.



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For Petitioner : Mr.M.R.Jothimanian

For Respondents

For R4 to R7 : Mr.K.T.S.Sivakumar
for Mr.S.Lakshmipathy

ORDER

The Civil Revision Petition has been filed as against the fair and decreetal order dated 28.09.2016 passed by the learned Principal District Munsif, Tindivanam Taluk, Villupuram District, in E.A.No.616 of 2009 in E.P.No.398 of 2006 in O.S.No.440 of 2004, thereby dismissing the petition filed by the petitioner under Order 21 Rule 58 of C.P.C.

2. The first respondent herein filed suit in O.S.No.440 of 2004 for recovery of money to the tune of Rs.13,600/- as against the second respondent. The said suit was decreed by the judgment and decree dated 07.08.2006, on the file of the learned Principal District Munsif, Tindivanam. In order to execute the said decree, the first respondent herein filed execution petition in E.P.No.398 of 2006 and brought the suit properties for Court auction sale in order to realize the decree amount.

3. The execution Court conducted auction sale on 26.08.2009 in



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which, 13 items of the suit schedule properties were brought for Court auction sale. As per the abstract price fixed by the Execution Court, the third respondent herein purchased the suit properties for the sale consideration of Rs.40,000/- and he deposited the entire amount. When the execution petition was posted for confirmation of sale and issuance of sale certificate, the petitioner herein filed an application in E.A.No.616 of 2009 under Order 21 Rule 58 of C.P.C., challenging the auction sale in respect of 13 items of the suit properties.

4. According to the petitioner, he derived the title over the suit properties by way of Will dated 17.01.1974, executed by his grand father. Thereafter, the petitioner is in possession and enjoyment of the properties and he was issued patta. He had no knowledge about the suit and alleged Court auction sale. However, it was dismissed for the reason that the said petition was filed belatedly and there was no fraud in the Court auction sale. Aggrieved by the same, the petitioner filed this present Civil Revision Petition.

5. Heard Mr.M.R.Jothimanian, learned counsel appearing for the



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petitioner and Mr.K.T.S.Sivakumar, learned counsel appearing for the respondents 4 to 8.

6. Admittedly, the decree amount is only Rs.13,600/-. However, the entire properties had been brought auction sale and sold out in favour of the third respondent herein. That apart, the petitioner is ready and willing to pay the entire sale consideration with interest. Considering the above facts and circumstances, this Court directed to the petitioner to bring the demand draft to the tune of Rs.3,50,000/- as full and final amount to be settled in favour of the legal heirs of the third respondent herein.

7. Accordingly, today the petitioner had taken four demand drafts for a sum of Rs.77,500/- each, in favour of the respondents 4 to 8, in total sum of Rs.3,10,000/- and also brought a sum of Rs.40,000/- as cash. All the demand drafts to the tune of Rs.3,10,000/- and cash of Rs.40,000/- have been duly received by the legal heirs of the third respondent viz., respondents 4 to 8 herein.

8. In view of the above, the order dated 28.09.2016 passed by the



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learned Principal District Munsif, Tindivanam Taluk, Villupuram District, in E.A.No.616 of 2009 in E.P.No.398 of 2006 in O.S.No.440 of 2004, is hereby set aside and the sale of the suit properties also set aside. The petitioner is permitted to withdraw whatever the amount deposited by the auction purchaser viz., the deceased third respondent herein, from the account of the execution Court after deducting the decree amount. The decree holder viz., the first respondent herein is also permitted to withdraw the decree amount from the execution Court. The execution Court viz., the learned Principal District Munsif, Tindivanam Taluk, Villupuram District, is directed to terminate the entire execution proceedings.

9. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

22.02.2023

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



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G.K.ILANTHIRAIYAN, J.

rts

To

1. Principal District Munsif,
Tindivanam Taluk,
Villupuram District.

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and C.M.P.No.618 of 2017

22.02.2023