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CRP No.3492 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3492 of 2023
and
CMP.No.21731 of 2023

1.M.Marimuthu Nadar
2.M.Lakshmi

... Petitioners

Versus

R.Murugan

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to strike off the execution proceeding in E.P.No.49 of 2008 in O.S.No.22 of 2001 pending on the file of the Subordinate Court, Poonamalle.

For Petitioners : Mr. D. Selvam

For Respondent : Ms. Niranjana Rajagopalan
for M/s.G.R.Associates

ORDER

The petitioners have filed this petition to strike off the execution proceeding in E.P.No.49 of 2008 in O.S.No.22 of 2001 pending on the file of the Subordinate Court, Poonamalle.



2. Heard Mr. D.Selvam, learned counsel for the petitioners and Ms.Niranjan Rajagopalan, learned counsel appearing for the respondent and perused the materials available on record.

3. The revision petitioners herein are the Judgment debtors in E.P.No.49 of 2008 in O.S.No.22 of 2001 on the file of the Subordinate Court, Poonamalle. The respondent herein is the Decree holder / respondent. The contention of the respondent is that the petitioners herein availed Housing Loan from M/s.Kalaimagal Mutual Benefit Fund Ltd., for a sum of Rs.1,50,000/- and had executed the simple Mortgage deed for security of the said loan in the year 1998. Due to their financial crises they were unable to repay the loan amount. Therefore, M/s.Kalaimagal Mutual Benefit Fund Ltd., had filed a recovery suit in O.S.No.22 of 2001 before the learned Subordinate Judge, Poonamalle and the suit was ordered exparte directing the petitioners herein to pay a sum of Rs.2,53,828/- on 19.09.2001 in favour of M/s.Kalaimagal Mutual Benefit Fund Ltd., Thereafter, M/s.Kalaimagal Mutual Benefit Fund Ltd., filed an execution petition in E.P.No.99 of 2005 wherein, to realise the decree amount, property was ordered to be auctioned and the same was purchased by the respondent by way of auction sale and the Court also issued sale certificate in his favour. Thereafter, the auction



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purchaser / respondent in turn filed an execution petition in E.P.No.49 of 2008 against the petitioners to deliver the possession of the suit property. In the mean time, the petitioners filed E.A.No.172 of 2009 under Order XXI Rule 90 of CPC to set aside the sale, but the same was dismissed on 07.10.2009. Further the petitioners have filed a CRP.No.3524 of 2009 against the order passed in E.A.No.172 of 2009 and the same has been dismissed on 15.12.2009. Thereafter, they filed application to reject the sale certificate issued in favour of the respondent, but the same was not considered, against which they have preferred another CRP.No.4526 of 2011 and the same was dismissed in the year 2017. While so, they received a notice to appear before the Lok Adalat on 22.11.2021 and they appeared before the Lok Adalat and the matter was settled. Accordingly, the petitioners paid a sum of Rs.5,50,000/- to M/s.Kalaimagal Mutual Benefit Fund Ltd., and award was passed on 16.02.2022. Subsequently, both the parties filed Joint Memo of Compromise before the Subordinate Court in E.P.No.49 of 2008. Now, when the auction purchaser / respondent attempted to take delivery of the property the executing Court declined to proceed with E.P.No.49 of 2008 to deliver the property to the respondent. Hence, the petitioners prayed to strike of the execution petition in EP.No.49 of 2008, as the matter was already settled.



4. On considering the submission of the learned counsel for the petitioners, it clearly shows that the petitioners were got loan from M/s.Kalaimagal Mutual Benefit Fund Ltd., during the year 1998 and had executed a simple mortgage deed. As they failed to pay the amount, the guarantor filed a suit in O.S.No.22 of 2001 before the Subordinate Judge, Poonamalle, in which the petitioners remained exparte. To execute the decree property was brought for auction through Court, wherein the respondent purchased the property in the auction and sale certificate was also issued in his favour. The petitioners, challenging the auction sale as well as the issuance of the sale certificate filed interlocutory application in the executing Court, but the same were dismissed. Against which Civil Revision Petitions were preferred and the same were also dismissed.

5. On seeing the fact, the petitioners are well aware of the auction purchase made by the respondent through Court of Law. But suppressing all the facts they appeared before the Lok Adalat as if they were called by the Court to settle the issue and entered into the settlement before the Lok Adalat with the original plaintiff / M/s.Kalaimagal Mutual Benefit Fund Ltd., behind back of auction purchaser / respondent herein. As per the settlement terms between the parties, a sum of Rs.5,50,000/- was paid by the petitioners to the



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original plaintiff / borrower. Accordingly, Lok Adalat award was passed on 16.02.2022. The said Lok adalat was held in Subordinate Court building, Poonamalle. By virtue of the award passed by Lok Adalat, the petitioners contended that suit claim is settled to Act.

6. Admittedly, the petitioners knew that the respondent has already purchased the property through Court of Law, in such circumstances, without impleading the auction purchaser, in the Lok Adalat proceedings who is lawful owner of the property as on date behind his back the said award was obtained by the petitioners, in collusion with M/s.Kalaimagal Mutual Benefit Fund Ltd., / original plaintiff. Therefore, it is a clear case of abusing process of law and also they played to fraud upon the Court. Therefore the award is liable to be set aside. The petition filed by them to strike off the execution proceedings as such is not maintainable by law for the aforesaid reasons. On the other hand, the Lok Adalat award obtained by the petitioners in collusion with the original plaintiff is liable to be set aside.

7. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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WEB COPY 8. This Court requires an explanation from the Presiding officer, who conducted the Lok Adalat as well as in the executing Court for non-application of mind.

9. Registry is therefore directed to call for explanation from the learned Subordinate Judge, Poonamallee, as how E.P.No.49 of 2008 in O.S.No.22 of 2001 was referred to Lok Adalat, at whose request the matter was posted before the Lok Adalat and to submit report within a period of two weeks from the date of receipt of a copy of this order.

20.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

- 1.The Subordinate Judge, Poonamalle.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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