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C.R.P(MD).No.1141of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1141 of 2023

C.Shanmugam

... Petitioner

Vs.

V.R.Pitchaimani

... Respondent

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records resulting in the impugned fair and decreetal order passed in E.A.No.134/2018 in E.P.No.172/2011 in O.S.No.173/2005 dated 24.02.2023 on the file of Principal Sub Court, Madurai.

For petitioner : Mr.C.Sundaravadivel

ORDER

This Civil Revision Petition has been filed by the petitioner, to call for the records resulting in the impugned fair and decreetal order passed in E.A.No.134/2018 in E.P.No.172/2011 in O.S.No.173/2005 dated 24.02.2023 on the file of Principal Sub Court, Madurai.



2.The petitioner is the judgment debtor in O.S.No.173 of 2005 before the Principal Sub Court, Madurai. The suit was filed by the respondent for recovery of money given to the petitioner and the petitioner's mother who had executed a promissory note in favour of the respondent. Since the amount was not repaid, O.S.No.173 of 2005 was filed by the respondent. A preliminary decree was passed on 04.01.2008 after the petitioner remained *ex-parte*. Thereafter, final decree was passed on 06.092010. Pursuant to which, the respondent/plaintiff (decree holder) filed E.P.No.172 of 2011 to recover the principal amount together with the accrued interest till the date of actual realisation. Till date, not a penny has been paid by the petitioner, since the respondent has filed said EP. The petitioner has rushed to the Execution Court and filed E.A.No.134 of 2018 under Section 47 of CPC.

3.The learned counsel for the petitioner submits that the property in question is a house property. It is actually belongs to the petitioner's father and mother. The petitioner's mother executed a collateral security only in respect of her share and therefore, the sale of property including the petitioner's father's share cannot be bind the petitioner.

4.I have considered the argument advanced by the learned counsel for the petitioner.



C.R.P(MD).No.1141of 2023

5.In my view, there is no merits in the present Civil Revision Petition.

The preliminary decree was passed as early as 2008, in respect of loan that was given to the petitioner in the year 2008. The petitioner has not paid any amount. Not only a preliminary decree was passed but also final decree was passed. Only at the stage of execution proceedings, the petitioner has raised the plea under Section 47 of CPC stating that the Execution Court cannot proceed against 50% of the share in property of his father's share. The fact remains that a gift deed has also been executed in favour of the petitioner vide gift deed dated 19.09.2021. Thus, the property is that of the petitioner. The respondent is thus entitled to proceed against the property. Therefore, challenge to the impugned order is without merits. The impugned order does not suffer from any vices.

6.At the same time, considering the fact that the petitioner is in occupation of the property and the property is a house property, therefore, I am inclined to grant temporary reprieve to the petitioner subject to the petitioner depositing an amount of Rs.6,79,499/- within a period of 12 weeks from the date of receipt of a copy of this order. The EP proceedings shall be kept in abeyance for a period of 12 weeks. In case, the petitioner pays the amount, the property shall not be brought to Court auction. This is without



C.R.P(MD).No.1141of 2023

prejudice to the rights of the respondent to recover balance amounts and interest from 04.02.2011 in EP.

7.With the above direction, this Civil Revision Petition is disposed of.

No costs. Consequently, the connected miscellaneous petition is closed.

27.04.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss

To

- 1.The Principal Sub Court,
Madurai.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD).No.1141of 2023

C.SARAVANAN,J.

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