



C.R.P.(MD) No.1450 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD) No.1450 of 2023

and

C.M.P. (MD) No.7235 of 2023

Ganapathy Thevar (Died)

1.G.Sankarapandiyan

2.G.Balasubramanian

... Petitioners

Vs.

Arulmigu Subramania Swamy

Tirukoil Tiruchendur,

Represented by its Administrative Officer

Having office at Tiruchendur.

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the Docket Order dated 28.04.2023 passed in E.A.No.16 of 2014 in E.P.No.15 of 2006 in O.S.No.223 of 1994 on the file of the District Munsif Court, Cheranmahadevi.

For Petitioners : Mr.V.Meenakshi Sundaram
for Mr.C.Saravanakumar

For Respondent : Mr.M.Muthugeethiyan



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ORDER

WEB COPY This Civil Revision Petition has been filed to set aside the Docket Order dated 28.04.2023 passed in E.A.No.16 of 2014 in E.P.No.15 of 2006 in O.S.No.223 of 1994 on the file of the District Munsif Court, Cheranmahadevi.

2. The petitioners are the legal heirs/legal representative of late.Ganapathy Thevar who was a cultivating tenant who had taken approximately 60 cents of land from the respondent temple on lease. Late Ganapathy Thevar was in arrears of rent and had not paid the rent in time to the respondent Temple.

3. The respondent temple had filed O.S.No.223 of 1994 before the District Munsif Court, Cheranmahadevi to recover a sum of Rs.1647.87 from the petitioners' father, late.Ganapathy Thevar. O.S.No.223 of 1994 came to be decreed on 05.08.1994. The respondent temple represented by its deity thus filed E.P.No.15 of 2006 on 09.12.2005.

4. At the time of institution of the E.P.No.15 of 2006, the amount claimed by the respondent was Rs.2847.27. It appears that the petitioners'



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father failed to pay the amount and therefore, E.P. was ordered on 28.04.2003.

5. Thereafter, the house property of the petitioners' father was brought to Court auction under Order 21 Rule 89 of C.P.C. on 06.01.2012. The respondent temple itself purchased the property in the auction after obtaining leave under Order 21 Rule 72 of C.P.C. The sale certificate was also issued in favour of the respondent temple on 08.01.2013. Thereafter, delivery was ordered on 28.04.2023 which is sought to be challenged now in this Civil Revision Petition.

6. The learned counsel for the petitioners submits that although the petitioners' father was in arrears of rent for the Fasli 1401 to 1403 for a sum of Rs.1674.87 and further interest thereon at the time of the institution of E.P.No.15 of 2006, the petitioners are ready and willing to pay the E.P. amount and any other amount that may be ordered by this Court.

7. That apart, it is submitted that the petitioners are in possession of the land of the respondent temple and are paying rent for respective Fasli



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and there are no arrears barring the arrears which was the subject matter of O.S.No.223 of 1994, of which the petitioners were unaware. The learned counsel for the petitioners has brought a demand draft to be given to the respondent temple.

8. The learned counsel for the petitioners would submit that the respondent is a temple and that the house has been auctioned on 06.01.2012 and there was confirmation of sale made on 14.03.2012 and sale certificate was issued on 08.01.2013. It is submitted that though E.A.No.16 of 2014 was filed by the respondent on 13.03.2013 in time in accordance with the provisions of Order 21 of the Code of Civil Procedure, 1908, the fact remains that apart from the house, there were other immovable properties. That apart, it is submitted that the Court ought to have satisfied as to whether the immovable property was to be sold or movable properties were to be sold.

9. It is further submitted that even as per E.P. filed by the petitioners, the value of the property was Rs.1,02,000/-, whereas, the property was sold for a poultry sum of Rs.30,100/- as against the decree amount of Rs.2847.27 (including the interest).



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10. The learned counsel for the petitioners submits that even admittedly as per E.P.No.15 of 2006, the value of the property was Rs.1,02,000/-, whereas, the property was sold for a sum of Rs.30,100/- on 06.01.2012 by filing an application by reducing the upset price which was earlier fixed at Rs.40,000/-. It is submitted that there is a material irregularity that was committed by the Execution Court by permitting the respondent to not only to bring the property to auction but also purchase the same for a sum of Rs.30,100/-.

11. In this connection, reference is made to the decision of the Hon'ble Supreme Court in the case of **Balakrishnan Vs Malaiyandi Konar** reported in **2006 (3) CTC 180**, wherein, following its views in *Ambati Narasayya v. M. Subba Rao and Anr.* 1989 Suppl. (2) SCC, the Court held that a duty is cast upon the Court to sell only such portion or portion thereof as is necessary to satisfy the decree as is mandated by the legislature which cannot be ignored. The Sale held without examining this aspect cannot be said to be in conformity with this mandatory requirement and would be illegal and without jurisdiction. Relevant portion of the order reads as under:



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10...Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion but an obligation imposed on the Court. The sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. (See: *Ambati Narasayya v. M. Subba Rao and Anr.* 1989 Suppl. (2) SCC. The duty cast upon the Court to sale only such portion or portion thereof as is necessary to satisfy the decree is a mandate of the legislature which cannot be ignored. Similar, view has been expressed in *S. Mariyappa (Dead) by LRs. And Ors. v. Siddappa and Anr.* (2005 (10) SCC 235).

11. In *S.S. Dayananda v. K.S. Nagesh Rao and Ors.* (1997 (4) SCC 451) it was held that the procedural compliance of Order XXI Rule 64 of the Code is a mandatory requirement. This was also the view expressed in *Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh* (1994 (1) SCC 131).

12. The learned counsel for the petitioners has placed reliance on the decision of this Court in the case of ***Pavayammal (Deceased) Vs Thangammal (Deceased)*** reported in **2015 (1) MWN (Civil) 695**. The relevant portion of the order reads as under

20(6) According to the learned counsel for the respondents 4 to 6, the deceased 1st appellant is claiming right over the suit property only based on a decree passed in a partition suit filed by her, since



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the decree passed in the said suit is a nullity, now the appellants cannot claim that their interest is affected by the auction sale. Therefore, they cannot maintain the application under Order 21 Rule 90 of CPC.

13. That apart, the learned counsel for the petitioners further submits that the second schedule to the E.P. itself has valued utensils and movable asserts of the petitioners' father at Rs.3,550/-. The E.P. amount itself was Rs.2847.27 and below Rs.3,550/- and therefore, the Court ought to have auctioned the movable property first instead of auctioning the immovable property.

14. It is submitted that there is a large scale impropriety in the auction that was effected which was proceeded by an arbitrary reduction of the price by obtaining permission in E.A.No.27 of 2011 and E.A.No.28 of 2011. The learned counsel for the petitioners also brought a demand draft for Rs.45,000/- being the amount concluded at the rate of 6% of the decreed amount in O.S.No.223 of 1994 dated 05.08.1994. Hence, prays for appropriate relief.

15. Per contra, the learned counsel for the respondent submits that there is no scope for interference with the impugned order ordering the



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delivery of the property as E.P. was instituted as early as on 09.12.2005 in E.P.No.15 of 2006. It is further submitted that after the sale was concluded, the petitioners had the option to set aside the auction in accordance with Order 21 Rule 89, 90, 91 of C.P.C. Having failed to exercise the option within the limitation prescribed under Order 21 Rule 92 of C.P.C read with Article 127 of the Limitation Act, there is no scope for any interference.

16. The learned counsel for the respondent has produced a copy of the Sale Certificate, wherein, the value of the property was given as Rs.10,000/-.

17. The learned counsel for the respondent placed reliance on the following decisions:

- i. **K.Chinnammal (dead) through legal heirs Vs L.R.Eknath and others (Civil Appeal No.3626 of 2023)**
- ii. **C.Subramanian Vs The District Collector and others (W.P(MD)No.3300 of 2023)**



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18. A specific reference is made to the order of this Court in the case **Santhi Vs Kannappa Udayar and others** (CRP(NPD)Nos.3020 and 3021 of 2013). The relevant portion of the order reads as under:

"10. Thus, this Court finds that all the transactions are after filing of the execution proceedings. In other words, pending lis. It is also seen that third respondent, who has purchased the property from judgment debtor/second respondent herein on 15.02.2007, has filed an application in EA.No.205 of 2008 and the same has been disposed of and an order of attachment has been made and whether any appeal has been filed or not, has not been placed before this Court.

11. It is also seen from the endorsement that the Court sale was conducted on 03.08.2011, the sale was confirmed on 18.10.2011 and sale certificate was issued on 18.01.2002. Thereafter, the auction purchaser has filed an execution application for delivery and the same was allowed in EA.No.194 of 2012, in which possession was given on 05.06.2013 and the delivery was recorded on 02.07.2013 and EP was terminated since, the revision petitioner has purchased the property on 30.04.2008. she again claim application under the above said provisions since, the same is barred under order 21 Rule 102 CPC. Hence, the endorsement made by the Trial Court is sustained and both the CPRs are dismissed."

19. It is further submitted that any interference with the impugned order ordering delivery will also cause a large scale distortion as the temple has more than 750 acres of land in Cheranmahadevi region and



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that if the defaulting tenants are allowed to intervene with the delivery proceedings, the temple will be unable to recover the arrears of rent from the defaulting tenants.

20. The learned counsel for the respondent has also drawn attention to the latest decision of the Hon'ble Supreme Court in the case of ***Dipali Biswas and others Vs Nirmalendu Mukherejee and others*** reported in ***AIR Online 2021 SC 845***, wherein, the Hon'ble Supreme Court has concluded that the issue as to whether the auction was conducted properly or not cannot be agitated once the sale was made and delivery was ordered. Relevant portion of the order reads as under:

34. As we have pointed out elsewhere, the objection relating to Order XXI, Rule 64 has been raised by the appellants for the first time in the 5th round of litigation in execution. In the 1st round, the appellants exhausted the gun powder available under Order XXI, Rule 90, by taking recourse to a compromise with the auction purchasers, after alleging material irregularity in the conduct of the auction. The 1st round which commenced in 1979 came to an end in 1992 with the dismissal of SLP(C) No.18092 of 1991. In the order of the High Court dated 20.12.1990 that was under challenge in the said SLP, the High Court made it clear that none of the parties shall have any claim whatsoever as against the auction purchaser in respect of the purchased property (we have extracted this in Para 10 above).



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35. The 2nd round was kick-started with a suit in Suit No.249 of 1992 for a declaration that the auction sale was void. This is despite the express bar of a separate suit, under Section 47(1) of the Code. But the 2nd round got aborted with the dismissal of the suit due to abatement.

36. The 3rd round started with objections to the issue of sale certificate and it came to an end in the year 2001. The 4th round commenced when the auction purchasers moved the executing court for delivery of possession. Delivery was ordered by the executing court on 15.03.2002. This round came to a close with the dismissal of a SLP in the year 2005 and a review petition in the year 2006, arising out of the dismissal of a revision petition challenging the order of the executing court for delivery of possession. It is only thereafter that the 5th round of litigation was started by the appellants by filing a petition under Section 47 and raising the bogey of “jurisdictional error” on account of non-compliance with the mandate of Order XXI, Rule 64. In other words, the appellants have now exhausted almost all provisions available to a judgment-debtor to stall execution and the case on hand is fit to be included in the syllabus of a law school as a study material for students to get equipped with the various provisions of the Code relating to execution.

Conclusion

37. The appellants cannot be allowed to raise the issue relating to the breach of Order XXI, Rule 64 for the following reasons:-

(i) A judgment-debtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds of litigation, the appellants cannot be permitted to raise it now;



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(ii) *As we have pointed out elsewhere, the original judgment-debtor himself filed a petition under Section 47, way back on 02.09.1975. What is on hand is a second petition under Section 47 and, hence, it is barred by res judicata. It must be pointed out at this stage that before Act 104 of 1976 came into force, there was one view that the provisions of Section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted under Section 11 and it says that the provisions of this Section shall apply to a proceeding for the execution of a decree and reference in this Section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree;*

(iii) *Even in the 5th round, the appellants have not pointed out the lay of the property, its dimensions on all sides and the possibility of dividing the same into two or more pieces, with a view to sell one or more of those pieces for the realisation of the decree debt;*

(iv) *The observations in paragraph 4 of the order of the High Court dated 20.12.1990 in C.O.No. 2487 of 1987 that, “none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December, 1980”, has attained finality;*

(v) *Section 65 of the Code says that, “where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute”. The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an*



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order confirming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a conjoint reading of Section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this 4th stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court.

21. The learned counsel for the respondent further relied on the decision of the Hon'ble Supreme Court in **M/s.Jagan Singh and Co. Vs. Ludhiana Improvement Trust & others**, rendered on 02.09.2022 in Civil Appeal No.371 of 2022. A reference was made to the Paragraph Nos.33 to 39. A specific reference was made to Paragraph Nos.35 & 39 which read as under:-

35. The Executing Court and the First Appellant Court duly supported the reasoning based on various failures of the Judgment Debtor: (a) did not file objections at the time of presentation of



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execution petition; (b) did not file any objections at the time of order of attachment; (c) no objections filed when proclamation under Order XXI Rule 66 of the said Code was made; (d) no objections filed even at the time of public auction being actually conducted.

.....

39. We must note in the end that Order XXI of the said Code is exhaustive and in the nature of a complete Code as to how the execution proceedings should take place. This is the second stage after the success of the party in the civil proceedings. It is often said in our country that another legal battle, more prolonged, starts in execution proceedings defeating the right of the party which has succeeded in establishing its claim in civil proceedings. This is exactly what has happened in the present case. The various stages of Order XXI of the said Code when violated cannot given right to some extra indulgence merely because the Respondent Trust is an Improvement Trust. There cannot be a licence to prolong the litigation ad infinitum.

22. That apart, the learned counsel for the respondent has also placed reliance on the decision of the Madras High Court (Principal Seat of this Court), Chennai, in the case of **Santhi Vs. Kannappa Udayar**, rendered on 28.02.2020, in C.R.P.(NPD) Nos.3020 & 3021 of 2023. In the above case, the third respondent therein had purchased the property from the judgment debtor and has filed an application which has been disposed of and the order of attachment of property has been made. Therefore, the



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Court concluded that all the transaction were after filing of the execution proceedings, in other words, pending lis.

23. It is submitted that after the delivery has been made, there cannot be an order to set the clock back. The learned counsel for the respondent submits that the decision of the Hon'ble Supreme Court in **Pavayammal (Deceased)** case cited *supra* by the learned counsel for the petitioners will not apply to the facts of the present case as in the above case, the applications were filed under Order 21 Rule 90 of the Code of Civil Procedure, 1908, whereas, in the present case, the petitioner's father has remained *exparte* at the time of suit decreed and at time of proclamation of sale and the petitioner's father has not raised any objection till the sale certificate was issued.

24. The learned counsel for the respondent has also placed reliance on the decision of the Hon'ble Supreme Court in **Aarifaben Yunusbhai Patel and others Vs. Mukul Thakorebhai Amin and others**, (2020) 5 SCC 449, wherein, it was held that Limitation Act will not apply to the proceedings under Order 21 of Code of Civil Procedure.



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25. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

26. The petitioners' father was no doubt negligent in not taking any steps for setting aside the sale effected on 06.01.2012 in favour of the respondent Temple. The petitioners' father had also appeared in the execution proceedings. However, he did not make any protest in the execution proceedings. Thus, the property was auctioned on 06.01.2012 which has culminated in the confirmation of sale on 14.03.2012 and Sale Certificate was issued on 08.01.2013 confirming the position that the respondent was the lawful owner of the property in accordance with Section 65 read with order 29 Rule 94 of the Code of Civil Procedure, 1908.

27. At the same time, the petitioners as legal heirs of the deceased Ganapathy Thevar have an option to question the sale that was effected on 06.01.2012 as admittedly the amount declared in the E.P. for the value of the property was Rs.1,02,000/- though at the time of confirmation of sale and issuance of the Sale Certificate on 08.01.2013, it was drastically reduced to Rs.10,000/-.



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WEB COPY 28. Before bringing the immovable property to sale, the movable property should have been brought to sale as the E.P. amount was only Rs.2847.47 and the value of the movable property was Rs.3,550/-.

29. The Hon'ble Supreme Court in **S.Mariyappa (Dead) by Lrs. And others Vs. Siddappa and another**, 2005 (10) SCC 235, has held that where the execution court did not observe the duty cast on it, the judgment debtor can question the same under Section 47 of the Code of Civil Procedure.

30. Although the petitioners and their father did not take any steps to set aside the sale by invoking power of the Court under Order 21 Rules 89 & 90 of the Code of Civil Procedure Code, 1908, petitioners have rights to question the sale and delivery of the property under Section 47 of the Code of Civil Procedure, 1908 in the light of the decisions of the Hon'ble Supreme Court in **Ambati Narasayya Vs. M.Subba Rao and Another**, 1989 Supl. (2) SCC and in **S.Mariyappa** case referred to *supra*.



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31. This above view has been followed by the Hon'ble Supreme Court in **S.S.Dayananda Vs. K.S. Nagesh Rao and others**, 1997 (4) SCC 451. This above view has also been reflected in the decision of the Hon'ble Supreme Court in **Balakrishnan Vs. Malaiyandi Konar**, 2006 (3) CTC 180.

32. The sale of immovable property in presence of other movable properties to cover the decree amount and E.P. amount was unwarranted. The Court was required to bring the movable properties first to auction. Only if it was not sufficient to meet the decree amount, it could have allowed auction of the immovable property. That apart, the suit was itself filed by the respondent for recovery of the amounts due for the Fasli Year 1401, 1402 & 1403. It is confirmed by the learned counsel for the petitioners and the respondent that the petitioners are still continuing cultivate on the land belonging to the respondent as tenants and that there are no arrears or dues barring for the periods covered by the Judgment and Decree dated 05.08.1994 in O.S.No.223 of 1994.

33. Considering the above, all the proceedings pursuant to the impugned order shall be kept in abeyance with liberty to the petitioners to



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file appropriate petition under Section 47 of the Code of Civil Procedure, 1908 provided the petitioners file such petition within a period of two weeks from the date of receipt of a copy of this order.

34. Status-quo already ordered by this Court shall stand vacated in view of the above observations.

35. The petitioners shall deposit a sum of Rs.45,000/- which is admittedly petitioners' due as on date and a further sum of Rs.3,00,000/- as security for cost. In case the petition under Section 47 is allowed, the amount can be appropriated. Pending disposal of Section 47 Petition, the petitioners shall also ensure that there are no arrears of rent due on the land under cultivation.

36. The petitioner shall deposit a sum of Rs.45,000/- together with a sum of Rs.3,00,000/- to the credit of the E.P./E.A which is to be appropriated subject to the final outcome of the proposed Petition under Section 47, within a period of two weeks from the date of receipt of a copy of this order. The Court shall dispose such petition within a period of three months from the date of receipt of a copy of this order.



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C.SARAVANAN, J.

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37. Accordingly, this Civil Revision Petition stands disposed of. No cost. Consequently, connected Miscellaneous Petition is closed.

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To

The District Munsif Court,
Cheranmahadevi.

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