



C.M.A.No.3584 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.3584 of 2021
and C.M.P.No.20963 of 20201

Judgment reserved on 19.03.2024	Judgment pronounced on 17.04.2024
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1.S.K.Rathinavelu

2.R.Shanthi

...

Appellants

Vs.

1. Samptah (DHr)

Angammal (Died)

2.A.R.Samph (JDr)

Prayer: This Civil Miscellaneous Appeal is filed under Order 21 Rule 58(4) r/w Order 43 Rule 1 of CPC to set aside the fair and decreetal order dated 02.11.2021 passed in R.E.A.No.14 of 20159in R.E.P.No.84 of 2016 in O.S.No.90 of 2009 on the file of the III Additional District Judge, Salem.

For Appellants : Mr.P.Jagadeesan
For Respondents : Mr.A.K.Kumarasamy,
Senior Counsel for
Mr.S.Kaithamalai Kumaran
for R1
No appearance for R2



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J U D G M E N T

For the sake of convenience, the parties are referred to as per their ranking in the suit.

2. The petitioners in REA No.14 of 2019 are the appellants herein. They filed claim petition under Order XXI Rule 18 of CPC to dismiss the EP with respect to petition mentioned property.

3. The brief facts leading to filing of present case are as under -

3(a) One Rudrakoti purchased the property under sale deed vide Document No.3647 of 1965 from Swarnapuri Co-operative Housing Society Ltd., on 25.05.1965 and subsequently, executed a settlement deed in favour of the third respondent JD_r, in respect of property measuring 3716 sq.ft, in Plot No.B-14A as per Ex.P3 on 10.03.2003 and the present first claim petitioner purchased undivided ½ share under Ex.P1 and his wife has purchased another undivided ½ share measuring 3434 sq.feet each under Exs.P1 & P2 on 08.09.2005.



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3(b) It transpires from the records that the said Rudrakoti said to have borrowed a loan from the decree holder and alleged to have issued a cheque for Rs.7 lakhs on 23.01.2006 and the said Rudrakoti died on 08.02.2006. It appears that after the death of the above Rudrakoti, the decree holder appears to have deposited the cheque for collection on 03.03.2006 and the same was returned on 07.03.2006. Consequently, they have filed POP No.166 of 2006, subsequently numbered as OS No.90 of 2009 and the same was decreed on 30.06.2010. REP No.84 of 2016 was filed on 20.06.2016 wherein the property was attached and hence the claim petitioners have filed REA No.14 of 2019. After contest, the said petition was dismissed and hence the present appeal.

4. The learned counsel appearing for the claim petitioners would state that even before the borrowal for the alleged cheque amount of Rs.7 lakhs, these petitioners have purchased the property from the son of Rudrakoti who had settled the property in favour of his son and filed Exs.P1 to P3. Before



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the Execution Court, the decree holder filed counter statement alleging that it is sham and nominal sale deed.

5. The learned Senior Counsel appearing for the first respondent would contend that the present claim petitioners are aware of the proceedings and hence they are not bonafide purchasers for valuable consideration and hence made submissions in support of the order passed by the Execution Court.

6. Heard the learned counsel for the parties and perused the records.

7. On perusal of the records, I find that REA No.14 of 2019 has been filed under Order XXI Rule 58 CPC for prayer to dismiss the REP No.84 of 2016 in respect of the suit property on the ground that the claim petitioners had purchased the property under sale deed dated 08.09.2005 itself, namely Exs.P1 & P2. The Trial Court has dismissed the said petition on the ground that there is variation in the extent of land in the schedule mentioned property.



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8. Mr.P.Jagadeesan, learned counsel appearing for the petitioners would contend that even though limited extent is mentioned under Exs.P1 & P2 – sale deed executed in favour of the claim petitioners, the boundaries in the said document as well as plot numbers clearly identify petition - schedule of property and that the boundaries will prevail over the extent. Besides, Exs.P7 to P9 are the property tax, water connection and electricity connection receipts which shows that the claim petitioners are in possession pursuant to the sale deed viz. Exs.P1 & P2.

9. On perusal of the documents filed by the claim petitioners in support of the petition, I find that according to the petitioners, the petition mentioned property exclusively belongs to the claim petitioners by way of two sale deeds dated 08.09.2005 under Exs.P1 & P2. The petition mentioned property originally belongs to one Rudrakoti as per sale deed dated 25.05.1965 in which he constructed a terrace house in Door No.B-14A and thereafter the above said Rudrakoti gifted the above property with specific extent of 3716 sq.ft. in favour of his son who is the 3rd respondent, as per the settlement deed dated 10.03.2003. The said gift settlement deed has also been marked as



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Ex.P3. Both the petitioners have purchased the undivided $\frac{1}{2}$ share each from third respondent and others after verifying the encumbrance certificate.

10. The respondent herein filed POP No.166 of 2006 and on being allowed, it was re-numbered as O.S.No.90 of 2009. The suit was decreed on 30.06.2010 and execution petition was filed on 20.06.2016.

11. The main contention of the learned counsel for the petitioners is that even before the alleged borrowal, the property was settled by Rudrakoti in favour of his son who had in turn sold the property under Exs.P1 & P2, as early as on 08.09.2005. Even as per the averment, the alleged borrowal is only on 23.01.2006, much later than the sale deed executed in favour of the claim petitioners, assumes significance.

12. On perusal of Exs.P1 & P2, it is seen that both the claim petitioners have purchased the undivided $\frac{1}{2}$ share, in total to the extent of 3434 sq.ft.. Though no point has been raised in the counter statement, it appears that the Execution Court has gone into certain verification and comparison with regard to the schedule of property, survey number and extent mentioned in



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the sale deeds viz. Exs.P1 & P2 and settlement deed, Ex.P3. It remains to be stated that when the first claim petitioner was examined as PW1, he has categorically admitted that the survey number of the property purchased by them is 98. In the settlement deed executed in favour of the son of Rudrakoti, it is mentioned as 98/6 and it is only a sub-division. He further admitted that he purchased the property to a total extent of 3434 sq.ft. However, under Ex.P3-settlement deed, it is mentioned as 3716 sq.ft. Whether the total extent mentioned in Ex.P3-settlement deed is available on ground, there is no positive evidence. As per Exs.P4 to P9, Encumbrance certificate, water tax receipt, house tax receipt and electricity receipt, have all been changed in the name of the claim petitioners, pursuant to the sale deed, as early as on 2005 which is admittedly much prior the the alleged date of borrowal, the subject matter of the suit claim in O.S.No.90 of 2009 assumes significance.

13. The Lower Court records reveal the fact that the first respondent / decree holder filed a counter in REA.No.14 of 2019 wherein he has not disputed that the property sought to be sold in the court auction and the property purchased by the claim petitioners are different properties. It



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appears that the Execution Court have gone beyond the pleadings of the respondents.

14. In this connection, it is to be stated that Rudrakoti has also settled a property in favour of his daughter Gnanambal on the western side of the petition mentioned property. Subsequently, the said Gnanambal sold her property to one Dr.Srinivasan and Subashini. In Exs.P1 & P2, the said property is shown as the eastern boundary of the property purchased by the claim petitioners under Exs.P1 & P2. In fact, the sale deeds in Exs.P1 & P2, it is categorically stated that the claim petitioners purchased the property settled by Rudrakoti in favour of the 2nd respondent on 10.03.2003 under Doc.No.950 of 2003 on the file of Sooramangalam SRO. Hence, the claim petitioners are the absolute owners of the property sought to be sold in the execution proceedings.

15. The recitals in the sale deeds Exs.P1 & P2 and the plans attached therein would clearly prove that the claim petitioners have purchased the property sought to be sold which reads as follows -

(a) The plan clearly show that the property is part of



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S.No.98 (புல எண் 98ல் பகுதி) In fact, the sale deed Exs.P1 & P2 in the description of property states as “சர்வே எண் 98க்கு சம்பந்தப்பட்டதில்”

(b) The plot number is clearly shown as Plot No.B14A.

(c) The four boundaries as on date of purchase are clearly mentioned.

(d) The extent purchased was 3434 sq.ft with a house. The claim petitioners restrict their claim to the said extent alone and not more than that.

16. In view of the above, I find that the property in question and the property purchased by the claim petitioners under Exs.P1 & P2 are one and the same and the Execution Court has committed an error in assessing the plot number and wrongly arrived at a conclusion that the properties are different. The extent purchased by the claim petitioners under both the sale deeds viz. Exs.P1 & P2 is 3434 sq.ft and if there is any excess available on ground, that alone can be auctioned and not the land covered under Exs.P1 & P2.



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18. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the order dated 02.11.2021 made in REA No.14 of 2019 filed by the claim petitioners stands allowed. Consequently, REP No.84 of 2016 in stands dismissed. It is open to the decree holder / first respondent to proceed against the legal representatives of the said Rudrakoti from the estate of the deceased borrower, if any property is available other than the property purchased by the claim petitioners. Connected C.M.P is closed.

17.04.2024

Index : Yes / No
Neutral Citation : Yes/No
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RMT.TEEKAA RAMAN, J.

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To

1.The III Additional District Judge,
Salem.

2.The Section Officer,
VR Section, High Court,
Madras.

**Judgment in
C.M.A.No.3584 of 2021**

17.04.2024