



C.R.P.No.3990 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.3990 of 2023

and

CMP No.24500 of 2023

A.Ganesan

...

Petitioner

Vs

1. D.Selvaraj

2. Nallammal

...

Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 25.08.2023 passed in E.A.No.36 of 2023 in E.P.No.108 of 2022 in O.s.No.75 of 2009 on the file of the Sub Court, Udumalpet, Tiruppur District.

For Petitioner : Mr C. Kanagaraju

For respondents : Mr. S.Lakshmanasamy
first respondent

ORDER



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Challenging the order of dismissal in E.A.No.36 of 2023 in E.P.No.108 of 2022 in O.S.No.75 of 2009 passed by the Subordinate Judge, Udumalpet, the present Civil Revision has been filed.

2. The learned counsel for the revision petitioner submitted that the revision petitioner, who is the third party in the petition in E.P.No.108 of 2022 in O.S.No.75 of 2009, had filed an appeal in E.A.No.36 of 2023 before the Subordinate Court, Udumalpet, to declare that the revision petitioner herein is the owner of the property bearing Survey No.122/8 at Komangalam Village and to remove the said property from execution petition in E.P.No.108 of 2022 in O.S.No.75 of 2009. He further contended that the revision petitioner had purchased the property on 30.11.2022 for a valid sale consideration and on that day, he did not have any knowledge about the attachment made by the Court in the suit in O.S.No.75 of 2007. From the date of purchase, he is in possession of the property and he being the bonafide purchaser had filed the Execution Appeal in E.A.No.36 of 2023, but, the Trial Court, without proper application of available evidences and witnesses, by an order dated 25.08.2023 dismissed the same, against which, the present Civil Revision Petition has been



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filed and thus, prays to allow the revision.

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3. The learned counsel for the first respondent supported the impugned order and contended that the first respondent/deGREE holder filed the suit against the 2nd respondent/judgment debtor. In the said suit, he filed an attachment before Judgment application in I.A.No.378 of 2009 and attachment was also ordered by the Trial Court on 23.10.2009 and duly registered in the Sub-Registrar Office, Komangalam. Thereafter, when the attachment was in force, the Decree holder got permission to participate in the Court auction and purchased the property on 29.01.2020 for a sum of Rs.10,02,000/- and it was confirmed by the Court on 09.12.2020 and sale certificate was issued on 20.04.2022. Only after purchase of the property by the decree holder, the revision petitioner had purchased the property from the judgment debtor on 30.11.2022, hence, the purchase of the revision petitioner is invalid. Therefore, the Trial Court rightly dismissed the petition.

4. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on



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records carefully.

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5. On perusal of the records, the fact reveals that the first respondent/decreed holder filed the suit in O.S.No. 75 of 2009 against the 2nd respondent/judgment debtor for recovery of money based on the promissory note dated 12.01.2009, in which, he had filed an application in along with I.A.No.378 of 2009 and attachment of petition mentioned property and it was ordered on 23.10.2009 and the same was registered in the Sub Registrar Office, Komangalam in Document No.21 of 2009 and thereby, the property was encumbered as attachment and it is reflected the encumbrance book also. After that the suit was decreed on 30.01.2012. Since the 2nd respondent/judgment debtor had not paid the decree amount, the first respondent/decreed holder filed E.P.No.47 of 2012 for sale, in which, the decree holder filed application in E.A.No.107 of 2019 for seeking permission to participate in the auction proceedings, that was allowed on 11.12.2019. Thereafter, auction was conducted on 29.01.2020 and confirmed in favour of the decree holder on 09.12.2020, thereafter issued sale certificate on 20.04.2022. Further, it reveals that the revision petitioner, who is the third party in E.P.No.47 of 2012 in O.S.No.75 of 2009 on the file of the Sub-Judge,



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Udumalpet, Tiruppur District, had purchased the suit mentioned property on 30.11.2022, after the sale confirmation was made by the Court on 09.12.2020 in favour of the first respondent/decreed holder. Under these circumstances, the Court below rightly dismissed the E.A.No.36 of 2023 in E.P.No.108 of 2022 in O.S.No.75 of 2009 and I find no merit in this civil revision petition.

6. Accordingly, this Civil Revision Petition is dismissed with the direction to the Execution Court to dispose the Execution Petition within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

04.03.2024

Index: yes/no
Internet:yes/no
mrp

To
The Subordinate Judge,
Udumalpet.



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V. SIVAGNANAM, J.

mrp

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