



C.M.S.A.(MD).No.22 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.22 of 2012

and

M.P(MD) No.1 of 2012

Vilja

... Appellant/Appellant/
Petitioner/3rd Party

-vs-

1. Padmaja
2. Jebaraj
3. Siril Sunder Raj

... Respondents/Respondents/
Decree Holder/Judgment Debtor/
Auction Purchaser

PRAYER: Civil Miscellaneous Second Appeal filed under Order 21 Rule 90 r/w Section 100 of C.P.C, against the order and decreetal order passed in C.M.A.No.16 of 2007 on the file of the Subordinate Judge, Padmanabhapuram, dated 16.02.2012 confirming the order passed in E.A.No. 43 of 2004 in E.P.No.49 of 2004 on the file of the Principal District Munsif-cum-Judicial Magistrate, Eraniel, dated 19.12.2006.

For Appellant : Mr.C.K.M. Appaji



C.M.S.A.(MD).No.22 of 2012

For Respondents : Mr.H.Thayumanasamy
for M/s.Issac Chamber – for R1
: Mr.R.Subbaraj – for R3
: for R2- dismissed

J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed by the appellant as against the order passed in C.M.A.No.16 of 2007 on the file of the Subordinate Judge, Padmanabhapuram, dated 16.02.2012, wherein the first appellate Court has dismissed the appeal as against the order passed in E.A.No.43 of 2004 in E.P.No.49 of 2004 on the file of the Principal District Munsif-cum-Judicial Magistrate, Eraniel, dated 19.12.2006. The appellant herein has filed the appeal under Order 21 Rule 90 of C.P.C to set aside the same.

2. The brief facts of the case are as follows:

The appellant/petitioner is a third party in the Execution Petition. In the said case, final decree was passed on 29.08.2002 and the property was brought for sale through Execution Petition and the sale was conducted on 24.09.2003. The property was brought on sale by playing fraud, on the Court in bringing the schedule of property abruptly and without undergoing all the



C.M.S.A.(MD).No.22 of 2012

WEB COPY

formalities. There are material irregularities on the sale proceedings. The appellant filed a suit in O.S.No.185 of 2001 against the judgment debtor and obtained a decree dated 11.08.2003 for recovery of a sum of Rs.1,11,972/- and also filed a petition in I.A.No.708 of 2001 for attachment and the same was also ordered on 30.10.2001. Therefore, the appellant/petitioner has charge over the property. While so, in this proceedings, the sale has been held within 30 days against the mandatory provision under Order 21 Rule 90 of C.P.C. The time for sale has not been fixed. The decree holder and the judgment debtor colluded and brought the property for auction. The value of the property is more than Rs.3 Lakhs. But the sale property was undervalued to Rs.1,25,000/-. Therefore, the sale deed dated 24.09.2003 is vitiated by fraud and collusion and suffers with material irregularities. Therefore, the sale held on 24.09.2003 is to be set aside.

3. The brief averments in the counter filed by the first respondent are as follows:

The averments made in the petition all are denied as false. The first respondent is the plaintiff and the decree holder in the suit. The first respondent/Plaintiff has an earlier charge over the schedule property. There is



C.M.S.A.(MD).No.22 of 2012

WEB COPY

no fraud or collusion involved in the petition. Therefore, the petition is liable to be dismissed.

4. The gist of the counter filed by the third respondent is as follows:

The third respondent denied various allegations raised in the affidavit filed in support of the petition. The third respondent participated in the auction proceedings in view of the application made by the Court and he is the highest bidder of that auction and he has already deposited the entire amount of the sale price. The third respondent is the *bonafide* auction purchaser and there is no fraud or collusion involved in this case. Hence, the petition is liable to be dismissed.

5. Before the Execution Court, on the side of the petitioner, no witness was examined and only documents Ex.P1 and Ex.P2 were marked. On the side of the respondent, no witness was examined and no documents were marked.

6. The Execution Court, after hearing both sides, dismissed the petition. While holding the auction of the property, the Court also accepted the value



C.M.S.A.(MD).No.22 of 2012

of the property and the petitioner has not filed any material to show the value of the property and there is no collusion has brought to the notice of this Court by the petitioner and dismissed the petition. As against the fair and decreetal order, the appellant has filed first appeal before the Sub Court, Padmanabhapuram in C.M.A.No.16 of 2007 and the same was also dismissed by the first appellate Court by confirming the order passed by the Execution Court. As against the order passed by the first appellate Court, the present appeal has been preferred by the appellant on various grounds.

7. The learned counsel appearing for the appellant would contend that the appellant already filed a suit in O.S.No.185 of 2001 and obtained money decree for a sum of Rs.1,11,972/-. She also filed a petition for attachment of property and the same was allowed and the property was also attached. In the meantime, in the present case, the first respondent has obtained decree and to realize the decree amount brought the property for sale and the third respondent has participated in the auction proceedings and the procedures have not been followed under Order 21 Rule 90 of C.P.C and the sale price was not properly fixed and the property was undervalued. The trial Court has failed to consider the attachment before the judgment and the first Appellate



C.M.S.A.(MD).No.22 of 2012

Court also, without considering all the aspects, erroneously dismissed the appeal by confirming the judgment of the trial Court. Therefore, the order passed by the Execution Court as well as the First Appellate Court are liable to be set aside by allowing this appeal.

8. The learned counsel appearing for the first respondent would contend that she already filed a main suit and the same was decreed in her favour and thereafter, she brought the property for sale and property was also sold through Court auction. The third respondent is the successful bidder for higher value and the Court only fixed the value of the property. After following all the formalities by adopting the procedures only, the sale was conducted and this Court also confirmed the sale proceedings. The mortgage in the name of 1st respondent is prior to the date of attachment in the suit filed by the appellant. Therefore, the first respondent is the secured creditor and thereby, there is no irregularities in conducting the auction and sale proceedings. The Execution Court, after careful perusal of the entire material, correctly dismissed the petition and the first appellate Court has also after analyzing the evidence correctly dismissed the appeal by confirming the order of the trial Court. Therefore, there is no sufficient ground to allow this appeal



C.M.S.A.(MD).No.22 of 2012

and the appellant has not pleaded the substantial question of law and no substantial question of law is involved in this case. Hence, this appeal is liable to be dismissed.

9. The learned counsel appearing for the third respondent would contend that he is the *bonafide* purchaser for valuable consideration and he participated in the sale conducted by the Court and through Court auction he purchased the property for valuable consideration and paid entire sale price. The Sale Certificate was also issued in his favour. Therefore, the present appeal is liable to be dismissed.

10. This Court, after hearing learned counsel appearing on either side and perusing the documents including the order of the Court below, frames the following point for determination in this appeal:

“ i. Whether any substantial question of law is involved in this case or not?”

11. In this case, according to the appellant, she has already filed a suit in O.S.No.185 of 2001 against the judgment debtor and obtained a decree



C.M.S.A.(MD).No.22 of 2012

dated 11.08.2003 for recovery of money for a sum of Rs.1,11,972/- and also filed a petition in I.A.No.708 of 2001 for attachment of property and the same was also ordered on 30.10.2001. Thereafter, the first respondent colluding with the second respondent brought the property for auction through Court and the third respondent has participated in the sale through Court auction and obtained the property through Court auction. There are material irregularities in the Court auction. The date and sale price were not mentioned in the Ameen report. The value of the property is more than Rs.3 Lakhs. But the sale property was undervalued to Rs.1,25,000/-. The sale has been held within 30 days against the mandatory provision. The 2nd property was already mortgaged with the first respondent prior to the attachment of the petitioner and the property was also brought for sale through Court auction after decree by following procedure. The petitioner also admitted the sale of the property and the attachment is after the mortgage in favour of the first respondent. The main contention of the appellant is that the procedure has not been followed and thereby, the sale is vitiated. The main procedure alleged to have not been followed is the time limit of 30 days and value of the property is mentioned as Rs.1,25,000/-. But the real value more than Rs.3 Lakhs.



C.M.S.A.(MD).No.22 of 2012

WEB COPY

12. The learned counsel appearing for the appellant has relied upon the judgment of the Hon'ble High Court in the case of ***(D.V.Raghavan vs.A.J. Suresh Kumar and another)*** reported in ***2000 (II) CTC 13***. On a careful perusal of the above said judgment, it is clear that the order of attachment before judgment would effect from the date on which it was passed as against the transferee without consideration and not from date of knowledge of such order. in this case, the attachment was subsequent to the mortgage of the property. Further, the learned counsel appearing for the appellant also relied the judgment in ***Chinnammal and others Vs.P.Arumugham and another (1990) 1Supreme Court Cases 513***. On careful perusal of the judgment it will not be applicable to the present facts of the case, because in this case, there is no any irregularities or fraud in the sale proceedings before the Execution Court.

13. At this juncture, it is appropriate to refer the provision of Order 21 Rule 90 of C.P.C, which reads as follows:

“ 90. Application to set aside sale on ground of irregularity or fraud.

(1) Where any immovable property has been



C.M.S.A.(MD).No.22 of 2012

sold in execution of a decree, the decree holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.”

14. Even as per the order XX1 Rule 90 (2) of C.P.C, No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. Therefore, from the said provision it is clear that the applicant has to prove the irregularity and the Court has to satisfy that the applicant has sustained



C.M.S.A.(MD).No.22 of 2012

substantial injury by reasons of such irregularity or fraud, but in the case on hand, the appellant has not proved the irregularity and not satisfied this Court that the sustained substantial injury by reason of such irregularity.

15. In this context, it is relevant to mention that the petitioner has not examined any witnesses and not filed any documents to support of his contention and only filed decree and the order passed in Attachment before Judgment. Apart from that, no other documents were filed by the petitioner and the Execution Court also, after filing this application, confirmed the sale. The same was also not challenged by the petitioner. The Execution Court, after elaborate discussion, held that the petitioner has not filed any documents to prove the value of the property and there are no irregularities proved by the petitioner and correctly dismissed the petition. The first appellate Court also after elaborate discussion, confirmed the order of the Execution Court. Therefore, there is no infirmity or perversity found in the order of the Courts below and there is no substantial question of law involved in this matter and thereby, this appeal has no merit and it deserves to be dismissed.

16. Accordingly, this Civil Miscellaneous Second Appeal is dismissed



C.M.S.A.(MD).No.22 of 2012

WEB COPY

by confirming the order passed in C.M.A.No.16 of 2007 on the file of the Subordinate Judge, Padmanabhapuram, dated 16.02.2012 in E.A.No.43 of 2004 in E.P.No.49 of 2004 on the file of the Principal District Munsif-cum-Judicial Magistrate, Eraniel. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Judge,
Padmanabhapuram.
2. The Principal District Munsif-cum-Judicial Magistrate,
Eraniel.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.S.A.(MD).No.22 of 2012

P.DHANABAL,J.

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C.M.S.A(MD)No.22 of 2012

01.03.2024