



C.R.P(MD)No.2036 of 2013(NPD)

WEB COPIED BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

**C.R.P(MD)No.2036 of 2013(NPD)
and
M.P(MD)No.1 of 2013**

G.Kumaresan

... Petitioner/Petitioner/
Respondent/1st Respondent

Vs.

1.G.Ganesan

...1st Respondent/1st
Respondent/Auction Purchaser

2.Thangaraja

...2nd Respondent/2nd
Respondent/Petitioner/Claimant

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the order dated 06.09.2013 passed in E.A.SR.No.4970 of 2013 in E.P.No.68 of 2008 in M.C.O.P.No.178 of 2002 on the file of the I Additional Subordinate Court, Nagercoil.

For Petitioner : Mr.R.J.Karthick

For R1 : Mr.R.Vignesh, for
Mr.Niranjana S.Kumar

For R2 : No appearance



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ORDER

The above Civil Revision Petition has been filed against the order dated 06.09.2013 passed in E.A.SR.No.4970 of 2013 in E.P.No.68 of 2008 in M.C.O.P.No.178 of 2002 on the file of the I Additional Subordinate Court, Nagercoil.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

3.The brief facts which give rise to the instant civil revision petition is that,

The second respondent herein has filed MCOP No.178 of 2002 before the I Additional Subordinate Court, Nagercoil, for the injuries sustained by him in an accident that had taken place on 26.08.2001 and claimed compensation of Rs.73,611 against the revision petitioner and one C.Perumal Pillai, who are the driver and owner of the vehicle. In the said petition, the address of the revision petitioner was wrongly mentioned and hence, the revision petitioner was set ex-parte and award was passed on 17.10.2005 directing the revision petitioner to pay a sum



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of Rs.35,650/- along with interest at the rate of 7.5% p.a.

4.Against which, the claimant/second respondent herein filed E.P.No.68 of 2008 to bring the petition mentioned property for sale so as to recover the award amount. In the said execution petition, sale was ordered and subsequently, the same was also confirmed. As a result of which, E.P.No.68 of 2008 was terminated on 17.10.2012. In such circumstance, the auction purchaser has moved an application in E.A.No. 126 of 2013 for delivery of the auction property.

5.At this juncture, the petitioner/Judgment Debtor has moved an application under Section 47 and Order 21 Rule 90 of C.P.C., to set aside the sale, dated 16.08.2012. The said application was rejected by the Executing Court by holding that the petition is not maintainable. Aggrieved with the said order, the petitioner/Judgment Debtor is before this Court.

6.The learned counsel appearing for the petitioner/judgment debtor would specifically contend that though there is a super structure in the



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petition mentioned property, the same has not been included. Further, the address of the revision petitioner has been wrongly mentioned in the petition, which was deliberately made only to defraud the petitioner/Judgment Debtor.

7.It is pertinent to mention here that Section 47 of C.P.C., can be brought into service only when there is a dispute in respect of the execution, discharge or satisfaction of decree. As rightly found by the Execution Court, the said execution petition was terminated on 17.10.2012. Therefore, no execution petition was pending for execution and the execution had already been terminated. At the relevant point of time, only an interlocutory application was pending to deliver the possession of the property purchased by the auction purchaser in the public auction. Therefore, the finding recorded by the Executing Court that Section 47 C.P.C., application not maintainable, is perfectly in order and the same is liable to be confirmed.

8.The next line of finding given by the Executing Court is that, even if there was any irregularity in the public auction, unless, there is a



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proof in respect of fraud to make the decree nullity, at the best, the petitioner/Judgment Debtor can raise an obstruction under Order 21 Rule 90 of C.P.C. Such application was filed before the Court on 31.07.2013, whereas the sale was confirmed on 17.10.2012. Under Article 127 of the Limitation Act, an application to set aside the sale ought to have been filed within a period 60 days. Whereas, in the case in hand, the obstruction application was filed beyond the period of limitation. Therefore, on this score also, the Executing Court found that the application is not maintainable.

9.No doubt, though the above grounds are gravamen for the rejection of the application. While arriving at the conclusion, the Executing Court has given some other finding based upon the record and disbelieved the case of the petitioner that he did aware about the Execution proceedings and the sale, in view of the wrong address cannot be found faulted. Therefore, this Court could not find any perversity or irregularity in rejecting the application filed under Section 47, and Order 21 Rule 90 of C.P.C., in SR No.4970 of 2013. Hence, this civil revision petition is devoid of merit and the same is liable to be dismissed.



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WEB COPY 10.In the result, this Civil Revision Petition is dismissed. No costs.

However, the learned counsel for the respondent would submit that EP is pending from the year 2008. Hence, considering the long pendency of the EP, this Court directs the Executing Court, Nagercoil, to dispose of the EP.No.68 of 2008 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also closed.

12.02.2024

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

To

- 1.The I Additional Subordinate Court,
Nagercoil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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