



C.R.P. (NPD)(MD).No.825 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.825 of 2019

and

C.M.P(MD) No.4987 of 2019

Ponnazhagu

... Petitioner/Petitioner/ Third Party/
Third Party

-vs-

1. Prema

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

2. T.V.K. Ramalingam Chettiyar

3. Jeyakumar

... Respondents 2 and 3/
Respondents 2& 3/Respondents/
Defendants

4. S.K.Murugan

... 4th Respondent/4th Respondent/
Auction Purchaser/
Third Party.

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order dated 09.04.2019 passed in the execution appeal in E.A.No.105 of 2014 in E.P.No.22 of 2013 on the file of the Subordinate Court, Aruppukottai.

For Petitioner : Mr.J.Barathan



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For Respondents : Mr.V.OM.Prakash
Caveator – for R4

ORDER

The present Civil Revision Petition has been filed by a third party in O.S.No.45 of 2005 on the file of the Sub Court, Aruppukottai, challenging the dismissal of an application filed under Order 21 Rule 90 of C.P.C.

2. The first respondent herein as plaintiff had filed O.S.No.45 of 2005, before the Sub Court, Aruppukottai, for the relief of recovery of money based upon the mortgage. A preliminary decree was passed on 09.04.2007 and a final decree came to be passed on 05.03.2012 in I.A.No.137 of 2009. After passing of final decree, the present revision petitioner has purchased the property from the defendants in the suit on 26.03.2012.

3. The decree holder had filed E.P.No.22 of 2013 to bring the property for Court Auction sale. The sale was conducted on 05.11.2013 and Sale Certificate was also issued. The Auction purchaser has filed E.A.No.94 of 2014 on the file of Sub Court, Aruppukottai, for taking delivery of the



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property. At the relevant point of time, the present revision petitioner had filed E.A.No.105 of 2014 under Order 21 Rule 90 of C.P.C to set aside the sale on the ground that she has purchased the property on 26.03.2012. The said application came to be dismissed by the Execution Court. Challenging the same, the present Revision Petition has been filed.

4. According to the learned counsel appearing for the revision petitioner, the Execution Court has not properly appreciated the fact that she had purchased the property even before the Court auction sale. She further contended that the Encumbrance Certificate did not disclose any mortgage deed dated 21.11.2001 when she purchased the property. When she had made some arrangements to discharge the registered mortgage in favour of the third parties, she was not aware of the earlier mortgage dated 21.11.2001 or the final decree passed pursuant to the said mortgage deed. In view of the above said facts, she contended that she is a *bonafide* purchaser for valuable consideration and the Court ought not to have brought the property for the auction sale. She being an interested person in the property, she is entitled to file an application under Order 21 Rule 90 of C.P.C, to set aside the same. She also questioned the mortgage transaction between the plaintiff and the



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defendants.

5. Per contra, the learned counsel appearing for the 4th respondent had contended that after final decree was passed in the suit, the respondents 2 and 3/ defendants have in collusion with the revision petitioner had sold the property to the revision petitioner. The present application filed under Order 21 Rule 90 of C.P.C is clearly barred by limitation. That apart, the third party is not able to establish the irregularity or infirmity in the conduct of the Court auction sale. Hence, he prayed for sustaining the order passed by the Execution Court.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The facts narrated above clearly indicated that the Court auction sale was conducted on 05.11.2013 and the sale was confirmed and Sale Certificate was also issued. The present application was also filed under Order 21 Rule 90 of C.P.C on 02.06.2014. As per Section 127 of the Limitation Act, any application to set aside the Court auction sale should be filed within a period



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of 60 days from the date of sale. In the present case, admittedly, an application under Order 21 Rule 90 of C.P.C has been filed beyond a period of 60 days and therefore, this application is barred by limitation. That apart, the revision petitioner neither pleaded nor established any ingredients under Order 21 Rule 90 of C.P.C. for the interference of the Court on the ground that irregularity of fraud in the conduct of the sale.

8. In these circumstances, there is no merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Court,
Aruppukottai.



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