



C.R.P.(MD).No.1843 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.07.2024

DELIVERED ON: 16 .07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).No.1843 of 2019
and CMP(MD).No.9470 of 2019**

Namachivayam(died)

M.Rajeswari

....Revision Petitioner

Vs

Chinnadurai (died)

1.Rajarathinam Pillai

2.The Deputy Registrar of Co-operative Society
and Registrar of the District Incharge
Tiruchirappalli

3.Tiruchirappalli Co-operative House Mortgage
Society Ltd.,
No.1261, Tiruchirappalli

4.Thangappa

5.Duraisamy

6.Natarajan

1/16



C.R.P.(MD).No.1843 of 2019

7.Kannan

8.Andal

....Revision Respondents

PRAYER: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, to set aside the fair order and decretal order dated 18.03.2019 passed in E.A.No.637 of 2005 in E.P.No.45 of 1989 in O.S.No.731 of 1985 on the file of the I Additional Subordinate Judge, Tiruchirappalli by allowing this revision petition.

For Petitioner :Mr.N.R.Murugesan

For R1, R3,
R5 to R8 : No appearance

For R2 : Mr.C.Satheesh
Government Advocate

For R4 : Mr.I.Velpradeep

ORDER

The instant revision petition has been filed by one Rajeswari who is a third party to O.S.No.731 of 1985 on the file of the I Additional Subordinate Judge, Tiruchirappalli challenging the dismissal of E.A.No. 637 of 2005 in E.P.No.45 of 1989 in the said suit.

(A).Facts leading to the filing of this revision are as follows:

2.The property in Survey No.1152/2 having an extent of



C.R.P.(MD).No.1843 of 2019

east-west measurement of 36 feet and north-south measurement of 40 .feet was originally owned by one Valliammal through a registered document dated 20.06.1921. After her lifetime, her daughter Nagammal and Nagammal's son Namachivayam were in possession and enjoyment of the same. The said Nagammal and Namachivayam have executed a registered settlement deed in favour of Nagammal's two other daughters namely Pappathiammal and Kunjammal for an extent of 15X19 feet out of 36X40 feet.

3.The said Pappathiammal and Kunjammal had mortgaged the said property with a Co-operative Housing Society. Due to non-payment of the dues, the extent of 15X19 feet area was brought to the auction which was purchased by one Rajarethinam Pillai through a sale certificate dated 06.08.1970 and he had taken delivery of the said property also. The auction purchaser Rajarethinam Pillai had executed a registered sale deed in favour of Chinnadurai (Plaintiff in the present suit) to a larger extent of 36X40 feet in the said survey number.

4.The said Chinnadurai in view of certain disputes raised by his vendor Rajarethinam Pillai and mortgagors namely Kunjammal and Pappathiammal, had filed O.S.No.930 of 1982 (Renumbered as O.S.No.



C.R.P.(MD).No.1843 of 2019

731 of 1985) on the file of the Subordinate Court, Trichy for the relief of declaration of title and recovery of possession. In the said suit, only an extent of 15X19 sq.feet was shown as suit schedule property. The said suit was dismissed by the trial Court on 25.03.1985. Challenging the same, the plaintiff Chinnadurai had filed A.S.No.142 of 1986 before the District Court, Trichy. The First Appellate Court was pleased to allow the appeal and decreed the suit as prayed for on 23.12.1987.

5.The decree holder had filed E.P.No.61 of 1988 for taking delivery of possession of 15X19 feet extent and he had also taken delivery. Hence. E.P.No.61 of 1988 was closed on 16.11.1988.

6.The First Appellate Court while decreeing the suit had allowed the appeal with cost of the plaintiff. For non-payment of the cost, the plaintiff had filed E.P.No.45 of 1989 as against the defendants 2 to 4 for attaching the immovable property and bringing the said property for sale. In the description of property in the execution petition, the entire 36X40 sq.feet was shown as schedule of property excluding 15X19 sq.feet that was already taken delivery by the decree holder.



C.R.P.(MD).No.1843 of 2019

7.Though notices were served upon all the respondents, they have not chosen to appear and the property was brought to sale on 04.09.1991.

8.One Thangappa S/o.Appavu Pillai was declared as auction purchaser. The sale was confirmed on 11.11.1991 and the sale certificate was also issued on 11.11.991.

9.The Court auction purchaser namely Thangappa had filed E.A.No. 651 of 1996 to take delivery of the said property. Pending the said application, a claim petition was filed by the third party in the suit namely Namachivayam in E.A.No.637 of 2005. The said Namachivayam had passed away and in his place, the present revision petitioner namely M.Rajeswari got herself substituted as purchaser of the property from Namachivayam under a registered sale deed dated 23.08.1995. The said claim petition was filed under Section 47 and Order 21 Rule 90 C.P.C.

10.The primary contention of the claim petitioner/third party was that the mortgage created by Namachivayam's sister is void and illegal and it is against the settlement deed dated 06.08.1949 and therefore, the auction sale conducted by the Co-operative Housing Society is illegal and as a consequence neither Rajarethinam Pillai nor Chinnadurai would get



C.R.P.(MD).No.1843 of 2019

any title to the property. It was further contended that though Rajarethinam Pillai had got a sale certificate from the Co-operative Housing Society for 15X19 feet, he had executed a sale deed in favour of the plaintiff for a larger extent of 36X40 feet under a sale deed dated 29.08.1981. He had further contended that for the said extent of 15X19 feet though it is contended that the delivery was taken by the decree holder, it is only a paper delivery and the physical possession is retained by him.

11.The revision petitioner had further contended that the property was brought to sale in E.P.No.45 of 1989 by violating the procedure established by law. She came to know about the Court auction sale only when delivery notice was served. She had further contended that the auction purchaser is a close relative of the decree holder and therefore, the sale is void, illegal and fraudulent one. Hence, she prayed for setting aside the sale confirmed on 11.11.1991 in E.P.No.45 of 1989 in O.S.No. 731 of 1985.

12.In this claim petition, the present revision petitioner Rajeswari got substituted on 02.01.2008 based upon a sale deed executed by Namachivayam on 23.08.1995. The Executing Court after considering



C.R.P.(MD).No.1843 of 2019

the application on merits, had dismissed the claim petition. Challenging the same, the present revision petition has been filed.

(B) Contentions raised on the side of the learned counsel appearing for the revision petitioner are as follows:

13.As far as the settlement deed dated 06.08.1949, Pappathiammal and Kunjammal would have only life interest over the property and they did not have any right or title to execute a mortgage deed in favour of the Co-operative Housing Society. Therefore, the auction conducted by the Housing Society and the purchase made by Rajarethinam Pillai and the subsequent sale in favour of the present plaintiff Chinnadurai are all null and void.

14.Though only an extent of 15X19 feet was mortgaged and the same was purchased by Rajarethinam Pillai, he had executed a sale deed in favour of the present plaintiff and the extent of 36X40 feet attempting to grab the property belonging to the claim petitioner.

15.No proper notice was issued to the claim petitioner in E.P.No. 45 of 1989 and he came to know about the Court auction sale only when he received notice in E.A.No.651 of 1996 for taking delivery of the property.



C.R.P.(MD).No.1843 of 2019

16.The property was undervalued at the time of Court auction sale, the delivery was taken after the mortgagors namely Nagammal and Kunjammal had passed away. The revision petitioner is a bonafide purchaser for valuable consideration and therefore, for non-payment of the suit cost to an extent of 21X40 need not have been sold. If at all the cost has to be recovered, it has to be recovered from Rajarethinam Pillai and not from other defendants. The plaintiff and the auction purchaser have colluded together in order to grab the property.

17.The trial Court had erroneously relied upon the judgement and decree in O.S.No.1529 of 1995 to dismiss the claim petition. Hence, he prayed for allowing the revision petition.

(C).Contentions of the learned counsel appearing for the respondents are as follows:

18.The suit in O.S.No.731 of 1985 was filed only to recover 15X19 feet that was mortgaged by the sister of Namachivayam and which was brought to auction sale by the Co-operative Housing Society.

19.Only for non-payment of the cost, the property that was not the subject matter of the suit was brought to auction. Therefore, the contentions of the claim petitioner that a property which is in no way



C.R.P.(MD).No.1843 of 2019

connected with the suit property has been brought to auction is not legally sustainable.

20.The Court auction sale conducted on 04.09.1991 in E.P.No.45 of 1989 was confirmed on 11.11.1991. Therefore, the present application filed on 14.02.1995 under Order 21 Rule 90 of C.P.C to set aside the Court auction sale is clearly barred by limitation.

21.The revision petitioner had filed O.S.No.1529 of 1995 as against the present decree holder and the auction purchaser for bare injunction with regard to the same property. The said suit was dismissed on merits on 13.02.2002. Challenging the same, no appeal has been filed and it has attained finality. Only after dismissal of the suit in O.S.No.1529 of 1995, she got impleaded herself in the claim petition by an order dated 05.01.2008. Therefore, they are no bonafides in the petition.

22.Admittedly, the revision petitioner/claim petitioner had purchased the property on 23.08.1995, after a sale certificate was issued in favour of the auction purchaser on 11.11.1991. Therefore, on the date when the original claim petitioner namely Namachivayam executed a sale deed in favour of the Rajeswari, he did not have any title over the same. Hence, he prayed for dismissal of the revision petition.



C.R.P.(MD).No.1843 of 2019

23.I have considered the submissions made on either side and perused the material records.

(D). Discussion

24.The property in Survey No.1152/2 having an extent of 15X19 feet was brought to auction by Co-operative Society and one Rajarethinam Pillai being the successful bidder and a sale certificate was issued in his favour on 08.06.1970. Therefore, it is clear that the said Rajarethinam Pillai can alienate only an extent of 15X19 feet. However, he had executed a sale deed in favour of Chinnadurai for a larger extent of 36X40 feet on 29.08.1991. Being aware of this defect, the plaintiff namely Chinnadurai had filed the present suit in O.S.No.731 of 1985 only for an extent of 15X19 feet for the relief of declaration of title and recovery of possession. The said suit has been decreed by the First Appellate Court and thereafter, the decree holder has taken possession of an extent of 15X19 feet by filing E.P.No.61 of 1988. Therefore, as far as the extent of 15X19 feet in the above said survey number is concerned, it has reached finality. In the said suit, not only the auction purchaser namely Rajarethinam Pillai but also the original mortgagor and others having title over the property have been impleaded in the suit. No one has chosen to challenge the decree.



C.R.P.(MD).No.1843 of 2019

25.The next contention of the learned counsel for the revision petitioner is that after taking delivery of the suit schedule property for an extent of 15X19 feet in E.P.No.61 of 1988, another Execution Petition in E.P.No.45 of 1989 has been filed to bring the balance extent in 36X40 feet for auction which is clearly illegal.

26.According to him, the balance extent of 36X40 sq.feet (excluding 15X19 sq.feet) is not the subject matter of O.S.No.731 of 1985. A perusal of E.P.No.45 of 1989 reveals that for non-payment of the cost, a second E.P. has been filed to bring the balance extent of property for sale. The schedule of property in E.P.No.45 of 1989 reveals that excluding 15X19 sq.feet, the balance property is sought to be attached and brought to sale. Therefore, the contentions of the learned counsel for the revision petition that though the property is not the subject matter of the suit is being brought to sale, is not legally sustainable.

27.The further contention of the learned counsel for the revision petitioner is that no proper notice was issued to the original claimant who is arrayed as the third defendant in the suit. A perusal of the claim petition filed by the said Namachivayam reveals that he had alleged that no notice has been served to him when the property is brought for sale. A perusal of



C.R.P.(MD).No.1843 of 2019

the proceedings of the Court in E.P.No.45 of 1989 reveals that the claim petitioner Namachivayam was arrayed as the third respondent the execution proceedings. After affixture, they have not chosen to appear and therefore, paper publication was ordered for R3. The 4th respondent namely one of the mortgagors has been served and his counsel has also entered appearance and sought time to file counter. Only one year thereafter, the property has been brought to auction on 04.09.1991 and confirmed on 11.11.1991. Therefore, it is clear that only after issuing notice to the claim petitioner namely Namachivayam, the Executing Court had proceeded with E.P.No.45 of 1989.

28. In the claim petition, the said Namachivayam has not given any details about the non-service of notice. The present revision petitioner has not placed on record anything to reveal that her vendor Namachivayam was not served with notice in the execution proceedings. Therefore, the contention of the learned counsel for the revision petitioner that the third respondent in the execution proceedings, was not issued with any proper notice is not been supported by any oral or documentary evidence.

29. In E.P.No.45 of 1989, the claim petitioner's property was attached on 24.03.1989. As per the contention of the present revision



C.R.P.(MD).No.1843 of 2019

petitioner, after attachment of the property, Namachivayam/claim petitioner has sold the attached property in favour of the present revision petitioner on 23.08.1995. In fact, the sale had taken place on 04.09.1991 and the sale has been confirmed on 11.11.1991 and only thereafter, the revision petitioner had purchased the property from the claim petitioner. Therefore, on the date of sale, the said Namachivayam did not have any right or title to execute the said sale deed in favour of the revision petitioner and the said sale deed is void in view of Section 64 of CP.C.

30.The revision petitioner had filed an independent suit in O.S.No.1529 of 1995 on the file of the District Munsif Court, Trichy for the relief of permanent injunction impleading the decree holder and the auction purchaser. The said suit was dismissed on merits on 13.02.2002 with a specific finding that the claim petitioner (Namachivayam) did not have a title to convey it to the revision petitioner on 23.08.1995. The revision petitioner has not chosen to challenge this judgement and decree and the same has attained finality.

31.After dismissal of O.S.No.1529 of 1995 on 13.02.2002, the revision petitioner has got herself impleaded in the claim petition in the place of Namachivayam by an order dated 02.01.2008 in E.A.No.4 of



C.R.P.(MD).No.1843 of 2019

2008. Even though, the said Namachivayam had passed away on 16.04.1998 and she had purchased the property way back in August 1995, she had chosen to file an impleading application only in 2008. It could be seen from the records that the claim petitioner Namachivayam had received delivery notice in January 1995. He had sold the property on 23.08.1995 in favour of the revision petitioner suppressing the pendency of E.P.No.45 of 1989. In fact on the date of execution of the sale deed by Namachivayam in favour of the revision petitioner, the property had already been sold in Court auction and the sale has been confirmed and a sale certificate has also been issued in favour of the Thangappa.

32.The present claim petition filed under Section 47 of Order 21 Rule 90 C.P.C. This Court had already arrived at a finding that the claim petitioner namely Namachivayam has not chosen to appear in the execution proceedings despite having knowledge about the same. An application under Order 21 Rule 90 C.P.C to set aside the sale on the ground of material illegality or fraud ought to have been filed within a period of 60 days from the date of Court auction. However, in the present case, the claim petition has been filed 4 years after confirmation of sale. Section 47 of C.P.C has been invoked only for the purpose of getting over



C.R.P.(MD).No.1843 of 2019

the time limit prescribed under Article 127 of Limitation Act for filing an application under Order 21 Rule 90 of C.P.C. Therefore, the claim application is not maintainable either on facts or under law.

33.In view of the above said deliberations, there are no merits in the revision petition. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

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

To

1. I Additional Subordinate Judge,
Tiruchirappalli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD).No.1843 of 2019

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in

C.R.P.(MD).No.1843 of 2019
and CMP(MD).No.9470 of 2019

16.07.2024