



C.R.P.(MD)No.1974 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1974 of 2024

and

C.M.P.(MD)No.11216 of 2024

1.A.Gopal

2. A.G.Vignesh

... Petitioners

VS

1. C.Sakthivel

2. N.Shanmugavel

... Respondent

PRAYER : Civil Revision Petition is filed under Article 115 of Civil Procedure Code, to set aside the fair and decretal order passed in E.A.No. 1 of 2023 in E.P.No.229 of 2019 in O.S.No.402 of 2010 on the file of Sub- Court, Dindugul dated 03.07.2024.

For Petitioner : M/s.Venkatesh

For Respondents : Mr. R.Parani, for R-1
M/s.A.Arul Jenifer, for R-2



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ORDER

This Civil Revision Petition is filed by defendants in the suit against the order passed in E.A.No.1 of 2023 in E.P.No.229 of 2019 in O.S.No.402 of 2010 on the file of Sub- Court, Dindugul, dated 03.07.2024.

2. The defendants are the revision petitioners herein and the plaintiff is the 1st respondent and the 3rd party is the 2nd respondent herein, who is an auction purchaser.

3. The plaintiff had filed a suit in O.S.No.402 of 2010 for recovery of money of Rs.4,00,000/- based on the pro-note. The suit was decreed directing the defendant to pay the principal amount of Rs.4,00,000/- along with interest. To enforce the said decree the auction sale was conducted and the 2nd respondent herein is the auction purchaser who had deposited a sum of Rs.9,66,710/- which is the principal amount along with interest.



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4. Now the stage of the execution proceedings is that the sale certificate was not issued and sale confirmation was not done. In such circumstances, the defendants have filed E.A.No.1 of 2023 wherein he had deposited the decree amount along with interest. The defendant has also deposited 5% of sale commission to the tune of Rs.1,28,190/- and poundage of Rs. 45,400.75/- to show his bonafide. It is seen that the defendant had filed the application in E.A.No.1 of 2023 under Order 21 Rule 89 of CPC, which is well within time. Further it is seen that the sale was on 11.10.2023 and the defendant had filed the E.A.No.1 of 2023 on 31.10.2023 itself, which is prior to issuance of sale certificate. When the defendant had fulfilled the conditions of the Order 21 Rule 89 of CPC, then the Trial Court ought to have granted the relief to the defendant by accepting the amount along with interest, poundage and cost, thereby satisfied the decree. Also, ought to have cancelled the sale and returned the amount to the auction purchaser.

5. For the reasons stated supra, this Civil Revision Petition is allowed. The impugned order, dated 03.07.2024, passed in E.A.No.1 of 2023 in



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E.P.No.229 of 2019 in O.S.No.402 of 2010 on the file of Sub- Court, Dindugul, is hereby set aside. The revision petitioners are directed to pay further cost of Rs.15,000/- to the plaintiff. The EP Court is directed to set aside the sale which was conducted on 11.10.2023. And to raise the attachment, since the decree amount is satisfied, the proceedings in E.P. No.229 of 2019 in O.S.No.402 of 2010 shall be closed. The deposited amount shall be refunded to the auction purchaser/2nd respondent herein. Cost of Rs.15,000/- shall be paid to the plaintiff. Consequently, connected miscellaneous petition is closed.

28.10.2024

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

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To

1. The Sub- Court, Dindugul.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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