



C.R.P.(MD).No.1735 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD).No.1735 of 2015

and

M.P.(MD).No.1 of 2015 and C.M.P.(MD).No.2984 of 2021

P.Mahalakshmi

.. Petitioner/Petitioner/Third Party/
Third Party

Vs.

1.P.Manimegalai

.. 1st Respondent/1st Respondent/
Auction Purchaser/Third Party

2.S.Pandian

.. 2nd Respondent/2nd Respondent/
Petitioner/Decree Holder

3.Ramalingam

4.Irulappan

.. Respondents 3 & 4/Respondents 3 & 4/
Respondents/Judgment Debtors

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 30.06.2015 passed in E.A.No.73 of 2014 in E.P.No.65 of 2007 in O.S.No.313 of 2004 on the file of District Munsif Court, Theni and allow the present Civil Revision Petition.



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For Petitioner : Mr.M.Saravanan
For Respondents : Mr.Sivathilakar for R-1
No appearance for R-2 to R-4

ORDER

The present Civil Revision Petition has been filed against the dismissal order passed in an application filed under Order 21 Rule 97 and 101 of CPC.

2. The main ground urged by the learned counsel for the petitioner is that the suit for recovery of money was filed against one Ramalingam and Irulappan on 07.10.2002. On the date of the suit itself, but before the suit property was attached, Ramalingam has executed a settlement deed in favour of his daughter Kaleeswari on 07.10.2002 and thereafter, the petitioner herein, who is the objector, has purchased the suit property on 13.03.2009. As per the perusal of the respective encumbrance certificate, no attachment has been registered and reflected and therefore, the petitioner is the bonafide purchaser for the valuable consideration. Therefore, the attachment order, the subsequent sale and delivery of possession is contrary to law and hence, the learned counsel prayed to confirm their objection and



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to set aside the transaction, which has been taken place in the execution petition.

3. The above contention was stoutly objected by the learned counsel for the first respondent by contending that the predecessor in title of the present objector has already moved an application to raise attachment in E.A.No.152 of 2008, wherein, such application has been dismissed and the same has also reached finality. Therefore, in the light of the order passed in E.A.No.152 of 2008, the instant petition is liable to be dismissed.

4. I have given my anxious consideration to the submissions on either side.

5. Admittedly, the petitioner has purchased the property from her predecessor in title vide sale deed dated 13.03.2009, on the relevant date the execution petition was pending. Therefore, the very transaction, which was entered by the petitioner, is hit by *lis pendens* as provided under Order 21 Rule 102 CPC. Apart from that, even the settlement deed executed in favour of Kaleeswari, who is the predecessor in title of the present objector,



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was on 07.10.2002. Admittedly, the suit was presented on the very same date on 07.10.2002.

6. Therefore, according to Section 52 of the Transfer of Property Act, any transaction taken place even on the date of presentation of the plaint, then the same would come within the umbrella of *lis pendens* transaction. Therefore, on both the grounds, qua under Section 52 of the Transfer of Property Act and Order 21 Rule 102 of CPC, the present application is hit by the principles of *lis pendens* as the settlement deed of the objector's predecessor in title and the sale deed standing in the name of the petitioner came into existence only during the pendency of the suit and execution petition. Therefore, such *lis pendens* transaction cannot be agitated in the execution proceedings by filing an objection petition.

7. Hence, this Court does not find any perversity in the order passed by the Executing Court.

8. In the result, the Civil Revision Petition is dismissed. The petitioner is granted liberty to proceed, if she has got any other remedy,



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according to law. There shall be no order as to costs. Consequently,
connected miscellaneous petitions are closed.

02.02.2024

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

To

- 1.The District Munsif Court,
Theni.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

Lm

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