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C.R.P.(MD)No.82 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 16/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.82 of 2023

and

CMP (MD) No.372 of 2025

Thoondi Karuppasamy : Petitioner/Petitioner/
Respondent/Respondent/
Defendant

Vs.

1.M.Murugeshwari : 1st Respondent/1st Respondent/
Petitioner/Auction Petitioner/
3rd Party
2.Ramar : 2nd Respondent/2nd Respondent/
2nd Respondent/Petitioner/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in EA No.110 of 2019 in EA No.14 of 2014 in EP No.24 of 2008 in OS No.1 of 2007 on the file of the Sub Court, Sivakasi, dated 04/08/2022.

For Petitioner : Mr.H.Arumugam

For Respondents : Mrs.P.Jessi Jeeva Priya



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O R D E R

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This civil revision petition is filed seeking to set aside the fair and decreetal order, dated 04/08/2022 passed in EA No.110 of 2019 in EA No.14 of 2014 in EP No. 24 of 2008 in OS No.1 of 2007 by the Sub Court, Sivakasi.

2.The facts in brief:-

The petitioner suffered a decree in OS No.1 of 2007, the suit for money on the basis of the pro-note. Even though the execution of the pro-note was admitted by the petitioner herein, but contended that those documents were executed in favour of one Marimuthu, when he obtained loan on mortgage. He discharged the mortgage, demanding the pro-note back, but the pro-note was not returned back. But that contention was rejected by the trial court. After full trial, the suit was decreed as prayed for with costs.

3.To execute the decree, the respondent herein filed EP No.24 of 2008 seeking attachment and sale of the property comprised in Survey No.956/4B measuring about 35 cents situated at Narikudi village. The property was also attached. Pending further process, EA No.110 of 2019 was filed by the petitioner seeking an order to release the property from attachment. That application was filed



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under section 47 CPC. In that petition, he has stated the property comprised in Survey No.956/4B and other properties were attached before judgment. Later, filed Execution Proceedings. In the EP proceedings, the land measuring about 35 cents and the house property were brought for sale. Sale was conducted and the third party namely one Murugeshwari purchased the property in the Court Auction sale. She is ready to pay the money. But the respondents are not willing to receive the money. More-over, it is also stated that he is doing agricultural operations in and round the property sold and keeping agricultural tools in the house property.

4.That was resisted by the Auction Purchaser stating that after the sale process was over, she filed EA No.60 of 2016 seeking delivery of the property. To stall the delivery of the property, the second respondent's sister filed a claim petition in EA No.60 of 2016. That was dismissed on 03/09/2018. Another similar petition was filed in EA No.72 of 2019. That was also dismissed, after remand.

5.Before the trial court, on the side of the petitioner, he was examined himself as PW1, marked 4 documents. On the side of the first respondent namely



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Auction Purchaser, she was examined as RW1 and no document was marked.

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6.After full enquiry, that petition came to be dismissed.

7.Against which, this civil revision petition is preferred.

8.Heard both sides.

9.Only a short point arises for consideration in this matter.

10.The petitioner wants the benefit conferred upon the agriculturist as per section 60(1)(c) of CPC.

9.Section 60(1)(c) of CPC reads as under:-

***"60.Properly liable to attachment
and sale in execution of decree:-***

*(1)The following property is
liable to attachment and sale in
execution of a decree, namely, lands,*



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houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:-

(a).....

(b).....

(c)houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for



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their enjoyment) belonging to an agriculturist or a labourer of a domestic servant and occupied by him."

10.As per the above said provision, it must be established by the petitioner that he is an agriculturist or a labour or basic servant and keeping the house and other buildings, as the case may be. Now the word 'agriculturist' is not defined anywhere in the Civil Procedure Code.

11.This issue came up for consideration on more than one occasion before several courts. The petitioner relied upon the judgment of the Hon'ble Supreme Court reported in SHRIMANT APPASAHEB TULJARAM DESAI AND OTHERS Vs. BHALCHANDRA VITHALRAO THUBE (AIR 1961 SUPREME COURT 589). Wherein the meaning of agriculturist mentioned in section 60(c) CPC has also been elaborately discussed. The relevant portion may be extracted herein:-

"It seems to us that even if it is not necessary that a person must till the land with his own hands to come within the meaning of the word "agriculturist" he must at least show



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that he was really dependent for his living on tilling the soil and was unable to maintain himself otherwise. In the present case, it is quite obvious that even if the appellants can be described as agriculturists in the widest sense of that term, they are not agriculturists who are really dependent for their maintenance on filling the soil and that they are unable to maintain themselves otherwise."

12.This is the majority view rendered in that matter. Minority view was otherwise. Reference was made to the Full Bench decision of this court reported in (AIR 1937 Mad. 551(FB)). Wherein the following observation is made:-

'We think that, having regard to the scheme of the Section exempting from attachment, as it does, tools of artisans, and, where the judgment-debtor is an "agriculturist", his implements of husbandry and such cattle of seed-grain as may be in the opinion



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of the court be necessary to enable him to earn his livelihood and his houses and other buildings occupied by him, protection is intended to be given to those who are real tillers of the land, and that an "agriculturist" in the Section is a person who is really dependent for his living on tilling the soil and unable to maintain him otherwise."

13.That view was differed by the minority judgment. However, majority judgment, as noted above, has held that the petitioner must prove that he is really depending upon the agricultural operations for his living and must also prove that he is unable to maintain him otherwise.

14.Now let us go to the evidence on record, as narrated by the execution court. The relevant para in that petition runs like this.

"5.The petitioner submits that he is an agriculturist. He had owned a tractor for ploughing the lands by availing loan from Canara Bank. He used to keep the tractor in the land 35



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cents (0.14.0 Hectare) in survey No. 956/6 adjacent to his residential house. He used to keep his agricultural implements like Kalappai, aruval, kodari, manvetti, crowbar, fertilizer, pesticides and other miscellaneous implements in his house. The auction sold house is the only residential house of the petitioner. He is living in the house along with his wife, sons, daughters, daughter-in-laws and grandchildren."

15. Nowhere in that petition, it has been stated that he is depending upon this agricultural land for his livelihood. So this does not satisfy the requirement of law.

16. During the evidence also, he has simply stated that he has stored agricultural tools in that property namely the house property. He has also obtained loan from the Bank for purchasing a Tractor. So even in his evidence, he has not satisfied the requirement of law as stated above.

17. Now the second question, which arises for consideration is whether the belated application can be entertained.



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18.The trial court has relied upon the judgment reported in **Bhuskar Traders Vs. Minikkipacha Kunhircman**. After receiving the attachment notice, the petitioner has not raised any objection. When he failed to make objection, at that time, the belated attempt cannot be permitted. I am not going into the delay aspect for the simple reason that the petitioner has not satisfied the requirement of law as set out by the Hon'ble Supreme Court.

19.In view of the above said statement of law, I find that the order passed by the trial court namely the execution court does not suffer from any illegality or irregularity. The order requires no interference.

20.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

16/04/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Court,
Sivakasi.

2.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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