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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.3851 of 2024
and C.M.P.No.21123 of 2024

S.P.Ramalingam

.. Petitioner

Vs.

1.N.Palanisamy
2.Somasundaram [died]
3.Palaniyammal Somasundaram
4.Mohanambal Thangaraj
5.Nirmala Srinivasan
6.S.Sivakumar
7.Umarani

.. Respondents

[Respondent -2 died. Respondents 3 to 7 are brought on records as Lrs of the deceased R2 viz., Somasundaram vide Court order dated 28.11.2024 made in C.M.P.No.26979 of 2024 in C.R.P.No.3851 of 2024]

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 28.04.2023 passed in E.P.No.83 of 2017 in O.S.No.125 of 2011 by the Subordinate Judge, Bhavani.



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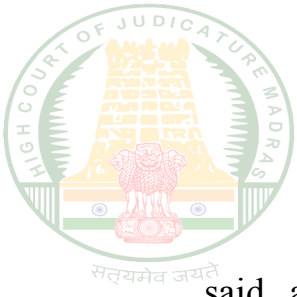
For Petitioner : Mr.V.Vijayakumar

For R1, R3 to R7 : Mr.P.Sesubalan Rajan

ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 28.04.2023 passed in E.P.No.83 of 2017 in O.S.No.125 of 2011 by the Subordinate Judge, Bhavani.

2.Originally a suit has been filed against the petitioner by the 1st respondent in O.S.No.125 of 2021, which was decreed on 06.08.2014 ordering to pay a sum of Rs.1,61,812.50/- along with interest of 9% from the date of filing the plaint till the date of decree and thereafter 6% till the date of realisation along with costs of Rs.16,160/-. In order to enforce the said decree, the decree holder filed an execution petition, wherein the Executing Court ordered to sell the property to an extent of 1 acre 50 cents in various survey numbers to realize the decretal amount. According to the petitioner, the market value of the total extent of the property brought for sale would be more than Rs.60,00,000/- however, the same was auctioned only for a meagre sum of Rs.8,03,000/-. After the auction, the Auction purchaser deposited the

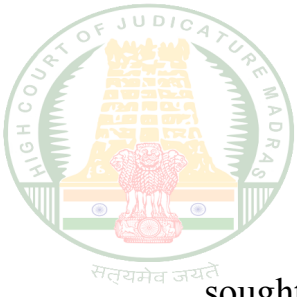


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said amount before the Court, out of which, the decree holder had withdrawn the amount of Rs.2,98,166/-.

3.At this juncture, the present challenge has been made on the ground that the auction sale itself is excessive and though there are five parallel lands, the executing Court has not valued the correct portion and instead of bringing the small portion of property for sale, which would be sufficient to satisfy the decree, had brought the entire extent of the property in various survey numbers for sale and sold the same at a meagre amount which is totally against the mandatory provision contained under Order 21 Rule 64 CPC.

4.When the matter came up for hearing on earlier occasion, the learned counsel appearing for the revision petitioner would submit that the revision petitioner is ready and willing to pay the entire amount deposited by the Auction purchaser who bought the property in auction and and urge this Court to set aside a sale as per Order 21 Rule 89 CPC while setting aside the impugned order. Learned counsel appearing for the respondents



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sought time to get instructions from the respondents on this aspect.

5.Today, when the matter is taken up for hearing, the learned counsel appearing for the respondents would submit that as per their calculation the amount payable by the petitioner would come to Rs.5,96,380/- and if that amount is credited in their favour, they have no objection to set aside the impugned order.

6. Learned counsel appearing for the revision petitioner submitted that according to his calculation the amount payable for the total extent of the property brought for sale was only a sum of Rs.4 Lakhs.

7.Considering the above submissions and the fact that the sale itself was made against the provision under Order 21 Rule 64 CPC and that the smaller extent of land itself would have satisfied the decretal amount, this Court is of the view that the Executing Court sold the excessive extent of the property which is in fact, contrary to the very provision of law.



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8. In view of the above, the order dated 28.04.2023 passed in E.P.No.83 of 2017 in O.S.No.125 of 2011 by the Subordinate Judge, Bhavani. is set aside since the judgment debtor has also agreed before this Court to pay for the total extent of the property which was sold to the auction purchaser. The judgment debtor is directed to deposit a sum of Rs.5,00,000/- on or before 31.01.2025 by way of Demand Draft to the respondents 2 to 6. It is made clear that if the amount is not deposited within the time frame fixed by this Court, this revision petition would get revived.

9. Hence, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

rst

Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order

To:

The Subordinate Judge, Bhavani.



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CRP.NPD 3851 of 2024

N.SATHISH KUMAR, J.

This Civil Revision Petition has been listed today at the instance of the learned counsel appearing for the petitioner under the caption 'for being mentioned'.

2. The learned counsel appearing for the petitioner submitted that as per the direction of this Court, he has already deposited a sum of Rs.5 lakhs before the trial Court. Hence, he seeks consequential relief for registering the Order of this Court as the sale itself has been set aside by this Court in the revision. The grievance of the auction purchaser is that though he had filed an application for withdrawal of the amount, the trial Court has not permitted him to withdraw the amount.

3. The registry is directed to incorporate following paragraph at the end of the Order in CRP.NPD.No.3851 of 2024, dated 06.01.2025 :

“The petitioner is at liberty to register the Order of this Court. It is made clear that when an application is



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filed, the trial Court shall permit the legal heirs of the auction purchaser to withdraw the amount.”

and issue fresh Order copy to the parties concerned.

25.02.2025

VRC



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N.SATHISH KUMAR, J.

rst

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06.01.2025