



**C.R.P(MD)Nos.785 and 786 of 2023**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 28.01.2025**

**Pronounced on : 19.02.2025**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ILANGO VAN**

**C.R.P(MD)Nos.785 and 786 of 2023**

**and**

**C.M.P(MD)No.3622 of 2023**

Koodammal

... Petitioner / Petitioner /  
Respondent / Defendant  
(in both CRPs)

**Vs**

A.Ramaiah

2.M.Shanmugavelayutha Ganesan

R2 is suo motu impleaded vide  
Court order dated 06.12.2024.

... Respondent / Respondent / Petitioner /  
Plaintiff (in both CRPs)

**COMMON PRAYER :** This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 02.11.2022 passed in E.A.Nos.1 and 2 of 2022 in E.P.No.37 of 2017 in O.S.No.28 of 2014 on the file of the learned Principal District Court, Tirunelveli, by allowing this Revision Petition.



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For Petitioner : Mr.R.R.Kannan  
For R1 : Mr.R.Subramanian  
for Mr.M.Saravanan  
For R2 : Mr.R.Pon Karthikeyan

(in both CRPs)

### **ORDER**

These Civil Revision petitions are filed to set aside the fair and decretal order dated 02.11.2022 passed in E.A.No.1 of 2022 in E.P.No. 37 of 2017 in O.S.No.28 of 2014 on the file of the learned principal District Court, Tirunelveli.

2. The suit in O.S.No.28 of 2014 was filed by the respondent herein as a decree holder against the revision petitioner seeking the relief of recovery of Rs.12,52,000/- and cost. The suit was decreed as prayed for with cost and preliminary decree on mortgage was passed on 27.01.2016 and thereafter final decree was passed on 01.02.2017. The decree was put in execution in E.P.No.37 of 2017. The property was brought for sale. The property was sold in public auction. To set aside



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the sale, on the ground of material irregularity, E.A.No.1 of 2022 was filed under Order 21 Rule 89 of CPC, which came to be dismissed by order dated 02.11.2022. Simultaneously, E.A.No.2 of 2022 was filed to set aside the ex parte order passed under Order 21 Rule 106 of CPC in E.P.No.37 of 2017. On the very same date, that application was also dismissed. Against which, the separate revisions are preferred by the judgment debtor.

3. Now we will take up E.A.No.2 of 2022 wherein it is stated that after receipt of summons from the Court, he engaged an advocate. Even during the execution proceedings, he was collecting money from him periodically, later he promised to compromise the matter. By that way, he received huge amount from her. Later, came to know that the property was sold in public auction on 05.03.2021. The property is worth more than 20 Lakhs, but the same was sold for meagre amount of Rs.6 Lakhs. She did not receive any notice in the execution proceedings. The auction purchase and the plaintiff colluded together brought the valuable property at lesser amount. Now she is ready to pay the entire decree amount.



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4. Counter was filed repeating the contention stating that she appeared in the execution proceedings, filed the counter and sought time for payment of decree amount and thereafter she did not pay the same so finally sale was conducted.

5. The execution Court after hearing both sides, recorded a finding that the revision petitioner appeared in the execution proceedings. Since she refused to receive the notice, an order was passed, is not correct on record. She appeared through an advocate contested the matter. After five years, this application came to be filed. Against which, CRP(MD)No.786 of 2023, is filed.

6. Now coming to CRP(MD)No.785 of 2023, is concerned, it is filed against the order passed in EA No.1 of 2022. More or less the averments are the same, so also, the findings of the execution Court.

7. Heard both sides.



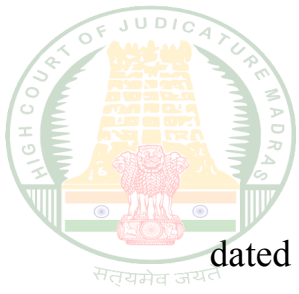
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8. The main grievance of the revision petitioner is that, the property is worth about more than 20 Lakhs. But the property brought for sale only for meagre amount to Rs.6 Lakhs. So the Court auction itself is improper and there is a material irregularity in the proclamation of the sale. Auction was conducted because of the collusion between the auction purchaser and the decree holder.

9. Regarding the second point absolutely there is no evidence on record. As mentioned in the preamble portion, the revision petitioner appeared in the execution proceedings through an Advocate and sought time for payment of the decree amount. So the question of collusion between the decree holder and the auction has no place to play. So this contention is rejected.

10. Regarding the first point of irregularity, learned counsel for the respondent would submit that this ground is absolutely fallacious because CRP(MD)No.2370 of 2018 was filed by this revision petitioner against the upset price fixed by the Court, wherein this Court by order



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dated 06.03.2019, dismissed the CRP holding that there is no reason to interfere with the upset price fixed by the execution Court. There ends the matter. There was no further proceedings by the revision petitioner. Now after exhausting the above said remedy, now the present petitions in E.A.Nos.1 and 2 of 2022 were taken out, as if she remained ex parte because of the miscommunication by the Advocate; sale was conducted for lesser amount.

11. Party cannot be expected to raise the very same point repeatedly at different levels and of different stage. Once the objection raised by the revision petitioner was rejected in CRP(MD)No.2370 of 2018, the very same point cannot be urged by filing execution application. This will amount to clear abuse of the process of Court. So this ground is also not available to the revision petitioner now.

12. Now the learned counsel for the revision petitioner would submit that this is the only residential house available to her. Only on that point of consideration, this Court directed the revision petitioner to deposit the entire decree amount by order dated 26.03.2014. In



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pursuance of the order, Rs.15 Lakhs was deposited by the revision petitioner, in the Court. The revision petitioner filed a memo to that effect. The report of the learned Principal District Judge, Tirunelveli, also indicates the same. Apart from that in the report it has been stated that the property was already delivered to the auction purchaser. Another application filed by the revision petitioner to set aside the ex parte order passed in E.A.No.3 of 2022 is rejected by the office, since stay was granted by this Court in the CRP.

13. By pointing out these developments, it is contended that since this is the only dwelling house available to her, the sale conducted may be set aside, considering the deposit of entire decree amount. For which respondent would submit that this ground is absolutely a false one because revision petitioner is owning several properties and even indulging in money lending business. So the sympathetic ground urged by the revision petitioner is completely meritless.

14. But I am not going to that aspect now. Simply because revision petitioner deposited the entire decree amount, setting aside the



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sale is not a technical one. But the conduct of the revision petitioner shows that she wants to drag on the matter endlessly. Moreover, to set aside the sale, the application ought to have been filed within the time. The amount was deposited in full on 17.03.2021. The property was delivered on 31.03.2021. The present petition in E.A.No.1 of 2022 was filed on 30.09.2021. Order 21 Rules 89 of C.P.C., read as under:

### **ORDER - XXI**

#### **EXECUTION OF DECREES AND ORDERS**

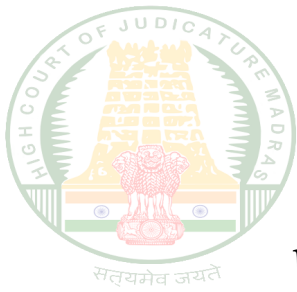
##### ***89. Application to set aside sale on deposit. -***

*(1) Where immovable property has been sold in execution of a decree any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court, -*

*(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and*

*(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.*

*(2) Where a person applies under Rule 90 to set aside the sale of his immovable property, he shall not, unless he*



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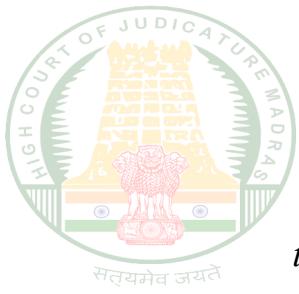
*withdrawn his application, be entitled to make or prosecute an application under this rule.*

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

15. Reading of the above provision shows that the deposit must be made in the application filed under Order 21 Rule 89. That application must be made within 60 days from the date of sale. It is seen that along with E.A., the amount was not deposited by the Judgment Debtor within the time stipulated. After six months, it appears that the petition was filed. Only at the instance of this Court, the amount was deposited, is cannot be construed as compliance of Order 21 Rule 89 of CPC. The ground of interference also not arises as indicated above. The order 21 Rule 90 reads as under:

***90. Application to set aside sale on ground of irregularity or fraud --***

*(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply*



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*to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.*

*(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.*

*(3) No application to set aside the sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.*

16. As indicated in Sub Rule 3 of Rule 19, already the revision petitioner exhausted remedy by way of filing Civil Revision Petition in CRP(MD)No.2370 of 2018. As mentioned above, that ground cannot be repeated once again. So that ground is not available to the revision petitioner. Considering the over all circumstances, I am of the considered view that no interference is called for by this Court in the order passed by the execution Court. Both the revision petitions are liable to be dismissed. The revision petitioner is at liberty to withdraw the amount deposited by her before the execution Court by following proper procedure.



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**WEB COPY** 17. Accordingly, these Civil Revision Petitions stand dismissed.

No costs. Consequently, connected miscellaneous petition stands closed.

**19-02-2025**

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

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To

- 1.The Principal District Court, Tirunelveli.
- 2.The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN, J.**

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