



C.R.P(MD)No.949 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.01.2025

Pronounced on : 21.02.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.949 of 2021

and

C.M.P(MD)No.5358 of 2021

S.Vijayakumar

**... Revision Petitioner / Decree Holder /
Plaintiff**

Vs

V.Selvaraj

... Respondent / Judgment Debtor/ Defendant

PRAYER : This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the order dated 24.02.2020 passed in E.P.No.132 of 2016 in O.S.No.153 of 2015 on the file of learned Sub Judge, Karur.

For Petitioner : Mr.K.Govindarajan

For Respondent : Mr.M.Saravanan

ORDER

This Civil Revision petition is filed to set aside the order dated 24.02.2020 passed in E.P.No.132 of 2016 in O.S.No.153 of 2015 on the file of learned Sub Judge, Karur.



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2. The suit in O.S.No.153 of 2015 was filed by this revision petitioner against the respondent herein, seeking the relief of recovery of Rs.9,51,650/- with subsequent interest and cost. The suit was decreed as prayed for with cost which was put on execution in E.P.No.132 of 2016. The property mentioned as second item were put on execution by way of sale for recovering the amount. During the course of the execution process, a memo was filed by the revision petitioner to bring both the items for sale. But the execution Court by order dated 24.02.2020 passed the following order:

" petitioner side filed memo for the both item for sale and recorded. On perusal of records petitioners claim amount is only Rs.10,78,264/- with interest. Petitioner mentioned the value of the 1st item is only Rs.20 Lakhs, whereas this Court give upset price for 1st item is only Rs. 15,75,000/-. Hence this Court that no head to bring the both property for sale. Hence issue fresh sale and proclamation in result of 1st item only for the upset price of Rs.15,75,000/- on 15.04.2020. Further hearing call on 20.04.2020. Batta in a week."



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3. Challenging the order, this Civil Revision Petition is preferred by the revision petitioner stating that the second item must be brought for sale. First item may not fetch the desired value.

4. Heard both sides.

5. This Court is not in a position to appreciate the grievance of the revision petitioner. As mentioned by the execution Court, the upset price for the first item was fixed at Rs.15,75,000/- and ordered issue of fresh proclamation. When the first item is sufficient to satisfy the decree amount what is the necessity for bringing the second item is not known. The petitioner cannot anticipate or apprehend without any basis that the first item may not fetch the value to satisfy the decree. Mere apprehension is not enough.

6. A report was called for from the execution Court as to the stage of the proceedings. A report is submitted by the letter dated 13.11.2024, that the sale was originally posted on 02.01.2019, because of the stay



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order passed by this Court, sale was not conducted and order of this Court was not complied by the respondent. The petition in E.A.No.2 of 2019, filed to reduce the upset price was dismissed. Sale was ordered to be held on 19.02.2020, there were no bidders. Now it is periodically adjourned and hearing is posted to 23.09.2024. Record of proceedings of the execution Court shows that now the first item is proceeded.

7. In this context, learned counsel for the respondent by relying upon the judgment of the Hon'ble Supreme Court made in the case of ***Sai Enterprises Vs Bhimreddy Laxmaiah and another***, reported in ***(2007) 13 Supreme Court Cases 576***, would submit that the execution Court cannot order excessive sale. It can confine the sale proceedings only in respect of the property which will satisfy the decree. According to him, the order passed by the execution Court does not suffer from any perversity.

8. For which, learned counsel for the petitioner would submit that the first item was already mortgaged by the judgment debtor that was not brought to their notice. So it may not be sufficient to satisfy the decree



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but as mentioned above it is merely an apprehension without any basis and on mere apprehension, no sale can be ordered by the execution Court in the second item. If any necessity arises in future, the execution Court is always at its power to bring the second item also for sale. So I find no reason to interfere with the order passed by the execution Court.

9. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

21-02-2025

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

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To

- 1.The Sub Judge, Karur.
- 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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