

C.R.P(NPD)(MD)No.1695 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1695 of 2023

and

C.M.P.(MD)No.8448 of 2023

V.Rajendran

... Petitioner

Vs

1.R.Parvathi

2.Venkatesan

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 14.06.2022 passed in I.A.No.1 of 2021 in E.P.No.14 of 2015 in O.S.No.22 of 2012 on the file of District Munsif Court, Bodinayakanur.

For petitioner : Mr.S.Vishnuvardhan

For Respondents : Mr.V.Ramakrishnan



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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 14.06.2022 passed in I.A.No.1 of 2021 in E.P.No.14 of 2015 in O.S.No.22 of 2012 on the file of District Munsif Court, Bodinayakanur.

2. The facts in brief:

Suit in O.S.No.22 of 2012 was filed by the first respondent herein viz., Parvathi against the revision petitioner viz., Rajendran, on the basis of the mortgage executed by the revision petitioner. Preliminary decree was passed *ex parte* by the judgment and decree dated 25.09.2012. Later, final decree application was filed in I.A.No.192 of 2013 and it was passed on 11.07.2014. It was put into execution in E.P.No.14 of 2015. The property was put into auction and the second respondent has purchased the property in the public auction held by the Execution Court on 18.09.2018. At that time, E.A.No.1 of 2021 was taken out to set aside the sale and for costs. It was resisted by the decree holder and the auction purchaser. The Execution Court, after hearing both sides,



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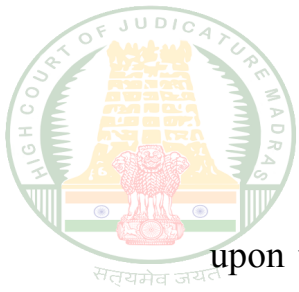
dismissed the petition by the order dated 14.06.2022. Against which, this revision is preferred.

3. Pending the revision, the matter was referred to the Mediation.

There was no settlement between the parties. Therefore, the matter was referred back to the Court. Both were heard on merits.

4. As mentioned in the preamble portion, not only in the preliminary decree, but even in the final decree application, the revision petitioner remained *ex parte*. Not only that, even in E.P.No.14 of 2015, he remained *ex parte*. Sale was conducted on 18.09.2018. As mentioned above, to set aside the sale, the present petition was filed on 09.04.2021. After lapse of three years, that application was filed under Sections 47 and 151 of C.P.C.

5. Preliminary objection was made by the respondents stating that without exhausting the statutory remedy available to the judgment debtor, as per the provisions of Order 21 Rule 90 of C.P.C., a petition under Section 47 is not maintainable and for that purpose, he would rely



upon the judgment of the Full Bench of this Court in ***A.P.V.Rajendran***

Vs. S.A.Sundararajan and others reported in ***1980 L.W. (Vol.93) pg. 47***

and followed in ***Palaniappa Gounder Vs. Nallamuthu Gounder & Ors***

reported in ***1982 L.W. (Vol.95) Pg.581***. The relevant portion of the

judgment of the Full Bench may be extracted hereunder:

“21. We have to, therefore, hold in this case that the irregularity and the defects found by the trial court will attract only Order 21 Rule 90 C.P.C. as the defects and irregularity are in the preparation and settlement of the sale proclamation, and not, under Section 47. As the sale in this case has been impeached only on grounds which attract Order 21 Rule 90, the judgment-debtor cannot escape the period of limitation by framing his application as one under Section 47. The substance of the application must be considered in order to determine whether the application is one which falls under Section 47 or under Order 21, Rule 90. Though the judgment-debtor had filed the application to set aside the sale under Section 47, it should be treated as an application only under Order 21, Rule 90, C.P.C. on the facts of the case in this case. In this case, the appellant decree-holder has contended before the executing court that an application for setting aside the sale under Order 21, Rule 90 C. P. C., is barred. This question hat not been gone into by that court, as it proceeded I on the



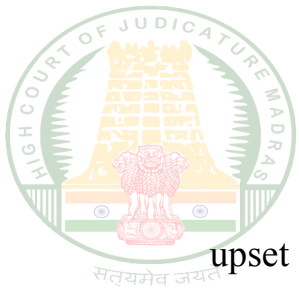
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basis that the application for setting aside the sale is one under Section 47. Further, the Judgment-debtor has to establish a substantial injury by reason of the alleged irregularities proved in this case. The question as to whether the judgment-debtor has suffered any substantial injury as a result of the alleged irregularity has not also been gone into by the executing Court, as it proceeded to dispose of the application for setting aside the sale on the basis that it is one under Section 47. Now that we have held that the application for setting aside is to be treated as one under Order 21, R. 90 C.P.C., the matter has to go back to the executing court for fresh disposal in the light of our judgment.”

6. In the light of the above said settlement of law, we will go to the ground raised by the revision petitioner. As stated above, he stated in the affidavit that the decree holder filed a petition in E.A.No.73 of 2018 to reduce the upset price. No notice was served upon him. Before confirmation of a sale, he filed a petition under Order 21 Rule 89 of CPC to set aside the sale before the Execution Court. It was returned on 30.11.2018. But Advocate on record failed to represent the same and later, that petition was missing. Since proper notice was not served upon him, he must be given an opportunity to file an objection for reducing the



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upset price. The valuation of the property is more than Rs.30 lakhs. The auction purchaser is the brother of decree holder. Therefore, the fraud has been committed by the decree holder and auction purchaser.

7. The Execution Court recorded a finding that on each and every petition, notice was served upon the revision petitioner. Whenever, a petition was filed to reduce the upset price, he was served with notice, but failed to appear. By taking advantage of non-sending the notice in E.A.No.13 of 2018, he has filed this petition. In E.A.No.54 of 2017, upset price was reduced to Rs.5 lakhs, which was also known to the revision petitioner. Therefore, in effect, the plea raised by the revision petitioner is clearly covered under Order 21 Rule 90 of C.P.C. as mentioned by the Full Bench. As mentioned above, he challenged the same on that ground. But, he did not prosecute the matter in a proper manner. Having not prosecuted the petition properly, now after lapse of limitation period to set aside the sale, he has chosen to file an application under Section 47 of C.P.C., which as mentioned by the Execution Court, is nothing but clear abuse of process of the Court.



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8. Even though the revision petitioner would submit that this is the only property available to him, at the later stage, he makes that contention. No doubt that the suit amount is only Rs.50,000/- but the property was sold for Rs.4 lakhs. The preliminary decree was passed on 25.09.2012 itself. Now we are in 2024. All along, the revision petitioner has not taken any steps to pay the mortgage money or decree amount. Therefore, the petitioner has to blame himself for the loss. He cannot make any complaint against the decree holder or the auction purchaser or the Court. Therefore, I find absolutely no merit in this revision and the same is liable to be dismissed.

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

28.01.2025

NCC :Yes/No
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G.ILANGO VAN, J.

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To

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

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