

(2014) 12 MAD CK 0168

In the Madras High Court

Case No : C.R.P. (MD) Nos. 2091 and 2139 of 2014 and M.P. (MD). Nos. 1 and 3 of 2014

Akilandeswari

APPELLANT

Vs

T. Thangaraj

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0168

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Judgement

M. Duraiswamy, J.—C.R.P.(MD).No. 2091 of 2014 arises against the order in E.A. No. 154 of 2013 in E.A. No. 321 of 2011 in E.P. No. 220 of 2000 in O.S. No. 213 of 2000 on the file of the Sub Court, Srivilliputhur. The third party/petitioner has filed the above civil revision petition.

2. C.R.P.(MD).No. 2139 of 2014 arises against the order dated 28.08.2014 made in E.A. No. 321 of 2011 in E.P. No. 220 of 2000 in O.S. No. 213 of 2000 on the file of the Sub Court, Srivilliputhur. The third party/petitioner has filed the above civil revision petition.

3. Pursuant to the decree passed in O.S. No. 213 of 2000, the property of the judgment debtor was brought to sale. The first respondent purchased the property in the Court auction and the sale was confirmed in his favour. The sale was conducted on 30.07.2007. Thereafter, the revision petitioner filed an application in E.A. No. 154 of 2013 to stay the application in E.A. No. 321 of 2011 till the judgment debtor pays a sum of Rs.2,92,640/- to her. According to the revision petitioner, the judgment debtor executed a simple mortgage in respect of the property which was purchased by the first respondent. Pursuant to the auction held on 30.07.2007, the auction purchaser filed E.A. No. 321 of 2011 for taking possession of the property.

4. It is also brought to the notice of this Court that the revision petitioner/

mortgagee has filed a separate suit based on the simple mortgage as against the judgment debtor. When the mortgage executed by the judgment debtor was a simple mortgage, the revision petitioner cannot claim that she is in possession of the property. The present application E.A. No. 321 of 2011 was filed by the auction purchaser to deliver of the possession of the property, pursuant to the auction held on 30.07.2007. When the suit filed by the revision petitioner is pending, the remedy available to her is to get a decree in that suit and execute the same. She cannot stand in the way of auction purchaser taking possession of the property. The Execution Court has rightly dismissed the application filed by the revision petitioner. Therefore, CRP(MD).No. 2091 of 2014 is dismissed.

5. So far as the civil revision petition in C.R.P.(MD).No. 2139 of 2014 is concerned, according to the revision petitioner, she purchased the property on 21.06.2001. She claimed that she is in possession of the property and therefore, the order passed in E.A. No. 321 of 2011 have to be set aside.

6. Mr. A. Arumugam, learned counsel appearing for the first respondent/auction purchaser, submitted that the alleged purchase of the property by the petitioner on 21.06.2001 was subsequent to the decree passed in the suit and after the property was attached in execution proceedings in E.P. No. 220 of 2000. It is also brought to the notice of this Court that the petitioner filed a claim petition under Order 21 Rule 89 CPC in E.A. No. 295/2007, which was also dismissed by the Execution Court.

7. Mr. R. Vijayakumar, learned counsel appearing for the petitioner submitted that as against the order passed in E.A. No. 295/2007, the petitioner has filed an appeal in CMA No. 13 of 2011 on the file of District Court, srivilliputhur and the same is pending.

8. Mr. A. Sivaji, learned counsel appearing for the second respondent submitted that decree holder received the entire decree amount and he has also filed a memo dated 01.11.2010 to that effect before the Execution Court. The Execution Court by order dated 22.12.2010 rejected the memo since the property was sold in the year 2007 itself. The learned counsel for the second respondent also submitted that the second respondent has already filed a civil revision petition challenging the order dated 22.12.2010.

9. When the claim petition filed by the revision petitioner was dismissed by the Execution Court and after the dismissal of the said petition, the revision petitioner cannot question the order passed in E.A. No. 321 of 2011 ordering delivery of possession. In these circumstances, the civil revision petition is devoid of merits and the same is liable to be dismissed. Accordingly, the civil revision petition in C.R.P.(MD).No. 2139 of 2014 is dismissed.

10. In the result, both the civil revision petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.