
(2002) 04 MAD CK 0157

In the Madras High Court

Case No : C.R.P.No. 2951 of 2001 and CMP No. 15707 of 2001

Chellaswamy

APPELLANT

Vs

Vincent and Rajaswaran

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2003) 1 LW 415

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : J. Anandhavalli, for the Appellant; K. Vijayakumar and N.Paul Vasanthakumar, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—An order of the learned Principal District Munsif, Kuzhithurai made in an execution application seeking to set aside the sale in the execution petition filed by the decree holder is under challenge.

2. From the averments made and the materials available on hand, it would be very clear that it was a decree for money put on execution by the decree holder, the first respondent herein, and the immovable property of the judgment debtor, the petitioner herein was brought for sale in E.P.No.53 of 2000; that the said immovable property was sold; and that the purchaser has also deposited the auction amount. At that juncture, the instant execution application for setting aside the sale was filed by the judgment debtor by depositing the entire money, calculated as per the decree along with the interest thereon. On contest, the said application was dismissed. The lower court passed the impugned order only on the ground that nothing has been stated as to whether any fraud has been played or whether there is any material irregularity, etc.

3. The learned counsel for the petitioner relying on a decision of this court reported in 1991 (I) THE MADRAS LAW JOURNAL REPORTS 409 (AROKIADAS

AND OTHERS V. AROKIASAMY AND OTHERS) would submit that when the petitioner deposited the entire amount due under O.21 Rule 89 of C.P.C., the lower court should have set aside the sale, since this provision is only to favour the judgment debtor, and hence, no grounds are necessary to set aside the sale. The learned counsel for the decree holder is ready and willing to take the money, deposited by the judgment debtor as per the decree, and the purchaser is also entitled to get back his money.

4. In the decision, cited supra, His Lordship Srinivasan, J., (as he then was), has held thus:

"In the present case, the petitioners are claiming under two registered sale deeds. If they are sham transactions, then the deposit made by them can be treated as one on behalf of the judgment-debtors. If, on the other hand, they are real transactions, then the petitioners are entitled certainly in their own right to make deposit under the Rule. The questions which have been considered by the executing court did not at all arise for consideration. Once it is found that the entire amount due under O.21, Rule 89 has been deposited within the time prescribed by law, by a person satisfying the description contained in the Rule, the court ought to have set aside the sale."

The decision, what is found herein, is strictly applicable to the present facts of the case. Following the said judicial pronouncement, the court below should have set aside the sale, instead of recording that no grounds are available for setting aside the sale. Therefore, the order of the court below suffers from illegality and infirmity, and the same is liable to be set aside.

5. In the result, this civil revision petition is allowed, setting aside the order of the lower court. E.A.No.44 of 2001 is allowed. The court auction sale dated 6.2.2001 is set aside. The lower court is directed to disburse the amounts, deposited both by the purchaser and the judgment debtor, in accordance with the provisions of the Code of Civil Procedure. There shall be no order as to the costs. Consequently, connected CMP is closed.