

(2009) 08 MAD CK 0393

In the Madras High Court

Case No : C.R.P. (NPD) No. 1988 of 2004 and C.M.P. No. 14772 of 2004

Veerappa Gounder

APPELLANT

Vs

Pappu and Hemantha Kumar Rep. by Guardian Mother 1st
Respondent

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, 151, 73

Citation : (2009) 4 CTC 460

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant;

Final Decision : Allowed

Judgement

S. Palanivelu, J.—The petitioner is a decree holder in O.S. No. 541 of 1998 on the file of the Subordinate Judge, Namakkal. He filed E.P. No. 133 of 2002 to execute the decree against the respondent. On 27.11.2002 the sale was fixed and there was no bidder. Hence the petitioner filed an Application in R.E.A. No. 3596 of 2002 under Order 21, Rule 72 and Section 151 of C.P.C. to permit him to bid in the auction in respect of the Item No. 1 of E.P. mentioned properties and have the sale proceeds set off against the decree amount. The respondent filed a counter controverting the allegations found in the affidavit. It is denied that the proposed price was high, that the respondent has not threatened the proposed bidders, that the properties which are brought for sale also include separate property of first respondent and; that the Petition has to be dismissed.

2. The learned Sub-Judge, Namakkal has partly allowed the Application by observing as follows:

1. That the petitioner is permitted to bid the auction in respect of Item No. 1 of the Execution Petition.

2. That the Petition is dismissed in respect of the set off of the decree amount as

per Section 73 of C.P.C.

3. Under Order 21, Rule 72 of C.P.C. the Court may permit the decree holder to bid in the auction. The Executing Court even though permitted the petitioner to bid in the auction, as regards setting off the decree amount, in view of Section 73, dismissed the Application. Section 73 is applicable only to a circumstance where several decree holders claim their respective decree amounts. But admittedly in this case there is no other person who obtained decree against the respondents other than this petitioner. Hence, the dismissal of the Petition invoking Section 73 by the Executing Court is not at all sustainable.

4. Learned counsel for the petitioner also draws attention of this Court in a decision reported in A. Jayathilakam and Others Vs. S. Dhanasekaran, wherein the learned Judge has discussed about the provision under Order 21, Rule 72 of C.P.C. As far as the prayer for setting off is concerned, since there is no other decree holder, the permission should have been granted by the Executing Court. Even in the counter filed by the judgment debtors it is not stated that some other creditors are available to get their decree satisfied. Under the circumstance, the order passed by the Executing Court with reference to the set off the decree amount is set aside. In fine the Civil Revision Petition is allowed. The Executing Court is directed to set off the sale proceeds against the decree amount. No costs. Connected C.M.P. is closed.