

(2010) 11 MAD CK 0147

Madras High Court

Case No: C.R.P. N.P.D. No. 4134 of 2010 and M.P. No. 1 of 2010

Jameela Bibi and S. Umar Farook

APPELLANT

Vs

S. Vijayalakshmi and Others

RESPONDENT

Date of Decision: Nov. 25, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 66(2)

Hon'ble Judges: V. Periya Karupiah, J

Bench: Single Bench

Advocate: N. Manoharan, for the Appellant; Kalyana Sundaram, for R1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Periya Karupiah, J.

This Revision has been filed against the order passed by the Principal District Court, Coimbatore, in E.A. No. 28 of 2010 in E.P. No. 64 of 2008 in O.S. No. 330 of 2005.

2. Heard Mr. N. Manoharan, the learned Counsel appearing for the Petitioner, and Mr. K. Kalyana Sundaram, the learned Counsel appearing for the Respondent.

3. The learned Counsel for the Petitioners/judgment debtors would submit in his arguments that the the market value of the property brought for sale under the Execution Petition was Rs. 30, 00,000/- and the Government value was at a sum of Rs. 20, 00,000/-, but, the lower Court had fixed the upset price from Rs. 14, 00,000/- to 12, 00,000/- by accepting the contentions of the decree holder, which is not correct. He would further submit his argument that the fixation of the value of the petition mentioned property by reducing the upset price has not reflected the correct value of the property and, therefore, the said application for reduction of the upset price should have been dismissed. He would also submit that the decree was for a sum of Rs. 6,20,548/- with subsequent interest and costs, for which the property worth of Rs. 30,00,000/- need not be brought for sale and, therefore, the

reduction of upset price from Rs. 14,00,000/- to Rs. 12,00,000/- is not sustainable. Therefore, he would request interference of this Court with the said price and to pass suitable orders.

4. The learned Counsel appearing for the first Respondent/decreed holder would submit his arguments that the value of the property was referred as Rs. 10, 00,000/- in the sale documents and the Court Amin, who had inspected the property, had fixed the value at Rs. 15, 00,000/- but, there was no bidder for the said amount when the property was brought in auction on 06.10.2009. An application was filed by the first Respondent for reducing the upset price from Rs. 15,00,000/- to Rs. 10,00,000/- and it was reduced to Rs. 14,00,000/- and, on the subsequent date fixed for the sale, there was no bidder for the said price of Rs. 14,00,000/-. Therefore, it has become necessary for the first Respondent to apply once again in E.A. No. 28 of 2010 to reduce the upset price from Rs. 14,00,000/- to Rs. 10,00,000/- and the lower Court after considering the circumstances of the case, had passed an order reducing the upset price from Rs. 14,00,000/- to Rs. 12,00,000/-. Thereafter, the auction was held and the sale was knocked down by a third party and he had also deposited the sale price into the Court and the Petitioner has also filed an application to set aside the sale under Order XXI Rule 66(2) CPC in E.A. No. 230 of 2010 and the same is posted on 10.12.2010 and, therefore, the present contentions of the Petitioner cannot be adjudicated at this stage as it became infructuous. Therefore, he would request this Court to dismiss the revision.

5. I have heard the arguments advanced by the learned Counsel on either side. Undisputedly, the property was brought to sale in the subsequent auction and the same was sold to a third party as Auction Purchaser and the said sale has been questioned by the Petitioner before the Execution Court in E.A. No. 230 of 2010 and the same is posted on 10.12.2010 for adjudication. Under such circumstances, the contentions raised by the Petitioner in this revision cannot be considered or adjudicated by this Court which would be detrimental to the disposal of the said application and therefore, the contentions now raised should be considered by the Execution Court in E.A. No. 230 of 2010 filed by the Petitioner. Accordingly, the Petitioner is at liberty to raise these contentions at the time of hearing of the said application, which shall be disposed of by the lower Court after giving sufficient opportunity to the first Respondent on merits. It is made clear that the present disposal of the revision will not stand in the way of the Petitioner in raising such contentions in E.A. No. 230 of 2010.

6. Accordingly, the Revision is disposed of with the said direction. Consequently, the connected miscellaneous petition is closed. There is no order as to costs.