(2002) 12 MAD CK 0175

Madras High Court

Case No: Civil Revision Petition (NPD) No. 1541 of 2002 and C.M.P. No. 16377 of 2002

Banumathi @ Karunaiammal		APPELLANT
	Vs	
A.P. Athanari, A.P. Karumalayan, Dhanammal and Guruval		RESPONDENT

Date of Decision: Dec. 19, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: (2003) 1 LW 551 : (2003) 1 MLJ 445

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: N. Manokaran, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, J.
Banumathi, third party filed a claim petition under Order 21 Rule 97 and 101 read with 47(1)(3) and Section 151 of C.P.C. to declare that the "A" Schedule property is her absolute property and also to grant an order of stay of the execution petition in E.P. No. 70 of 1989 filed by the L.Rs. of the decree-holder in O.S. No. 1306 of 1981. The same was dismissed. Hence, this civil revision petition.

2. According to the petitioner, she purchased the suit property from Guruval, the fourth respondent herein for a valid consideration on 26.4.1999. From that date onwards, she is in actual possession and enjoyment of the property. She has also obtained E.B. service connection and is also paying water tax and house tax to the Panchayat. She came to know that decree has been passed in O.S. No. 1306 of 1981

in respect of the suit property. In pursuance of the orders in the execution petition, there is a disturbance to her possession by the Court Amin. So, in order to avoid the dispossession in pursuance of the decree, she filed an application under Order 21 Rule 97 and Section 47 of C.P.C. to declare her right in the "A" Schedule property and to grant stay of the execution proceedings. The said application was dismissed mainly on the ground that Order 21 Rule 97 and Section 47 of C.P.C. would not apply to third party as she is not the decree-holder or the purchaser of the suit property in execution of the decree.

3. This order is challenged by Mr. Manokaran, the counsel for the petitioner on the strength of the decisions in Shreenath and Another Vs. Rajesh and Others, , N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, and RAJENDRAN GNANAOLIVU v. SUNDAR GNANAOLIVU 2002 (2) CTC 521 contending that third party also would maintain the application under Order 21 Rule 97 C.P.C. even before the dispossession.

4. It is true that the Supreme Court in the above decisions would hold that any person claiming a right over the property in respect of which he resists dispossession has the right to have his objection under Order 21 Rule 97 of C.P.C. Therefore, the reason given by the execution Court for rejecting the application under Order 21 Rule 97 as not maintainable is wrong. However, the impugned order could be sustained on some other reason.

5. In NARAYANA SARMA, N.S.S. v. GOLDSTONE EXPORTS P.LTD. 2001 (4) CTC 755, the Supreme Court would hold that if an obstructor admits that he is a transferee pendente lite, it is not necessary to determine the question raised by him that he was unaware of the proceedings when he purchased the property. The relevant portions are these:

"If the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. ..... In other words, the court is not obliged to determine a question merely because of the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings."

6. Under Rule 102, it is provided "Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person.

7. In the case on hand, the petitioner herself would admit in the petition that she purchased the suit property on 26.4.1999 while the suit in O.S. No. 1306 of 1981 was pending. Under those circumstances, the execution Court need not entertain the petition to determine the fact that the petitioner was unaware of the litigation when she purchased the property and the question regarding the validity of the transfer made by the decree-holder to third party. Therefore, I do not find any merit in the civil revision petition and accordingly, the same is dismissed. Consequently, C.M.P. No. 16377 of 2002 is also dismissed.