

Muthusamy Vs. Mani,

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Court : Chennai

Decided On : Jan-29-2002

Reported in : (2002)1MLJ689

Judge : K. Raviraja Pandian, J.

Acts : Indian Limitation Act, 1908 - Schedule - Articles 134 and 180; Code of Civil Procedure (CPC) - Sections 151 - Order 21, Rule 95

Appeal No. : C.R.P. No. 851 of 1998

Appellant : Muthusamy

Respondent : Mani, ;malarvizhi and ;prabakaran

Advocate for Def. : Ranjini Harikrishnan, Adv. for ;T.R. Rajaraman

Advocate for Pet/Ap. : D. Sivakumaran, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K. Raviraja Pandian, J.

1. The above Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the order dated 16.8.1996 made in an application filed in

R.E.A.No.1023 of 1993 under Order 21 Rule 95 and Section 151 of C.P.C for delivery of possession of the immovable property as per the sale certificate issued by the Court.

2. The revision petitioner is a Court auction purchaser who purchased the property on 2.11.1983 in the court auction for a sum of Rs.25,800/- and according to the petitioner, 1/4th of the amount was paid on the very same day and as per the sale notification, the balance amount was paid on 16.11.1983. The Judgment Debtor filed an application under Section 47 of C.P.C in R.E.A.No.867 of 1983 to set aside the sale, which application came to be allowed by the trial Court on 21.11.1984. The said Order was carried on in revision to this Court by the decree holder in C.R.P.No.159 of 1995 and ultimately this Court allowed the revision thereby set aside the order dated 21.11.1984 made in R.E.A.No.867 of 1983 by order dated 20.12.1989. In the light of the order passed on 20.12.1989 in the revision in C.R.P.No.159 of 1985, the auction sale in favour of the petitioner was confirmed on 21.9.1989. On 4.10.1989, the sale certificate was issued. It is pertinent to note here that on 2.7.1990, the judgment debtor died. The legal representatives of the judgment debtor filed an application in R.E.A. No.175 of 1992 under Section 47 of C.P.C to set aside the sale. The said application came to be dismissed on 23.12.1992. The auction purchaser filed an application in R.E.A.No.1023 of 1993 on 17.12.1993 for delivery of possession. Among other grounds, the petition was defended by the respondents herein i.e., the legal representatives of the judgment debtor that it is barred by limitation and the executing Court by its order dated 16.8.1996 in a laconic order dismissed the application as not maintainable since it is filed one year after the sale confirmation. The said order is now put in issue in the present revision petition.

3. I heard the argument of the learned counsel appearing on either side.

4. The precise question involved in this revision petition is, in the facts and circumstances of the case, when the sale has become absolute, whether the R.E.A.No.1023 of 1993 filed on 17.12.1993 is barred by limitation.

5. As stated in the summation of facts, the Executing Court dismissed the R.E.A.No.1023 of 1993 by a cryptic order, which is extracted below:

'This petition under Order 21 Rule 95 and Section 151 of C.P.C to deliver possession of immovable property as per sale certificate.

Petition is dismissed as not maintainable, since it is filed one year after sale confirmation.'

6. In order to find out whether the application filed under Order 21 Rule 95 by the petitioner is not maintainable since it is filed after one year from the date of confirmation of sale, we will have to see the relevant provisions of the Limitation Act as well as the provisions under the Civil Procedure Code.

7. The relevant Article in respect of the present case is Article 134 of the Limitation Act, which reads as follows:

134 For delivery of possession by a purchaser of immovable property at a sale in execution of a decree. One year When the sale becomes absolute.

From the above Article, it is clear that the court auction purchaser shall file the application for delivery of possession within one year from the date on which the sale becomes absolute.

8. The relevant provision under the Civil Procedure Code is Rule 92 Order 21, which envisages sale when to become absolute or be set aside. The provision provides that 'Where no application is made under Rule 89, Rule 90 or Rule 91, which rules provide for filing of an application to set aside the sale on deposit or on the ground of irregularity or fraud or on the ground of judgment debtor having no saleable interest in the property sold or where no such application is made or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

9. From the facts as stated above, it is clear that the auction took place on 2.11.1983 and the amount has been paid by the petitioner herein on 16.11.1983. Subsequently, the judgment debtor filed an application under Section 47 of the Civil Procedure Code in R.E.A.No.867 of 1983 to set aside the sale, which application came to be allowed by the trial Court on 21.11.1984. The said order was reversed in revision by the High Court on 20.12.1989. Thereafter, the auction sale in favour

of the petitioner was confirmed on 21.9.1989. The sale certificate was also issued on 4.10.1999. So, as per the provisions, on the making of confirmation of sale on 21.9.1989, the sale has become absolute and as per Article 134, on the sale becoming absolute, the limitation for filing an application under Rule 95 of Order 21 starts running. The subsequent filing of another application by the legal representatives of the judgment debtor in the year 1992 in R.E.A.No.175 of 1992 to set aside the sale would not extend to the period of limitation, because as per the provision of Rule 92 of Order 21, on the confirmation of sale by the Court, the sale becomes absolute and the limitation under Article 134 starts running. If that be so, the period of limitation provided for one year expires by 21.9.1990. The petitioner herein has not filed any application under Rule 95 of Order 21 within that period and the application came to be filed only on 17.12.1993. The filing of the application under Section 47 of C.P.C in R. E.A.No.175 of 1992 by the legal representatives of the Judgment debtor has been taken as a shield to stop the running of the limitation, which cannot be sustained in my opinion. The court sale is a compulsory sale conducted pursuant to an order passed by the Court. The Order is susceptible of being set aside on the ground of judgment debtor depositing the entire amount as stated under rule 89 to 91 on the ground of irregularities in the publication or conduct or sale as envisaged under Rule 90 or on the ground that the judgment debtors have no saleable interest under Rule 91. That is why Rule 92 makes it clear that where such an application was made and disallowed, the court shall make an order confirming the sale and thereupon the sale becomes absolute. On the sale becoming absolute, the limitation under Article 134 starts running and so far as the present case is concerned, that period of limitation expires by 21.9.1990. It is an admitted case that no application has been filed within that period.

10. The Supreme Court in PATTAM KHADER KHAN VS. PATTAM SARDAR KHAN reported in : (1996)5SCC48 has held thus:

'On the sale becoming absolute, it is obligatory on the part of the Court to issue certificate. That may, for any reason, get delayed. Whether there be failure to issue certificate or delay of action on behalf of the court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which

have no bearing on the limitation prescribed for the application under Article 134. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued.'

The Supreme Court further held thus:

'The period of one year limitation, now prescribed under Article 134 of the Limitation Act, 1973, in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act of 1908, is reflective of the legislative policy of finalising proceedings in execution as quickly as possible by providing a quick forum to the auction-purchaser to ask delivery of possession of the property purchased within that period from the date of the sale becoming absolute, rather than from the date of issuance of the sale certificate. On his failure to avail of such quick remedy the law relegates him to the remedy of a suit for possession in a regular way.'

11. While that being so, on the facts, it is admitted that from the date of confirmation of sale i.e., on 21.9.1989, the application under Rule 95 of Order 21 C.P.C has to be filed within one year and that period expires by 21.9.1990. Hence, the order passed by the trial Court is in accordance with the provisions. The subsequent filing of an application in the year 1992 by the legal representatives of the judgment debtor would not give any legal right to the court auction purchaser to compute the period of limitation after the termination of proceedings initiated by the legal representatives. Hence, though the trial Court has not given any detailed reason, the conclusion arrived at by the trial Court is correct and as such I am not inclined to interfere with the order and the revision is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs.

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