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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2011

CORAM

THE HONOURABLE MR. JUSTICE A. SELVAM

CIVIL REVISION PETITION No.2057 of 2011

and

MISCELLANEOUS PETITION No.2 of 2011

P.Thangavelu ..2nd Respondent/2nd Respondent/Petitioner
Vs.

1.Mohammed Ariff ..Peitioner/Petitioner/Respondent

2.T.Chandrasekar ..1st Respondent/1st Respondent
(R2 - Given up) .. Respondent

Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 against the order dated 09.08.2011 passed in Execution Petition No.28 of 2008 in M.C.O.P.No.75 of 2004 by the Sub Court, Uthamapalayam, Theni District.

For Petitioner : Mr.PT.S.Narendravasan

ORDER

This Civil Revision Petition has been filed against the order dated 09.08.2011 passed in Execution Petition No.28 of 2008 in M.C.O.P.No.75 of 2004 by the Sub Court, Uthamapalayam.

2. The first respondent herein as petitioner has filed M.C.O.P.No.75 of 2004 on the file of the Court below, wherein an executable award has been passed for a sum of Rs.1,57,314.50 paise. The executable award has been put into execution in Execution Petition No.28 of 2008 on 09.08.2011. The Court below has brought both items of properties for sale. Against the order passed by the Court below, the present Civil Revision Petition has been filed.

3. Considering the quantum of amount mentioned in Execution Petition No.28 of 2008 as well as the value of each item of property mentioned in Execution Petition No.28 of 2008 and also the nature of the order passed on 09.08.2011, this Court is of the view that notice need not be sent to the respondents and this Civil Revision Petition is disposed of on merits at the stage of admission.

4. The learned counsel appearing for the revision petitioner has sparingly contended that Execution Petition No.28 of 2008 has been filed only in respect of Rs.1,57,314.50 paise and in Execution Petition No.28 of 2008, two items of properties have been mentioned and the first item is worth of Rs.4,00,000/- and the second item is worth of Rs.3,00,000/- and the second item itself would be sufficient to satisfy the award amount mentioned in Execution Petition No.28 of 2008 and the Court



below without considering the above aspect has erroneously passed the impugned order to the effect that both the items should be sold in Court auction and therefore the order dated 09.08.2011 is liable to be modified.

5. In fact, this Court has perused the entire proceedings in Execution Petition No.28 of 2008. In Execution Petition No.28 of 2008, two items of properties have been mentioned. The first item is valued at Rs.4,00,000/- and the second item is valued at Rs.3,00,000/-. The amount mentioned in Execution Petition No.28 of 2008 is Rs.1,57,314.50. Since the amount mentioned in Execution Petition No.28 of 2008 is Rs.1,57,314.50, the second item itself would be sufficient so as to satisfy the decree put into execution in Execution Petition No.28 of 2008. But the Court below without considering the correct provision of law has erroneously brought both the items of properties for sale through Court auction and therefore the order dated 09.08.2011 passed by the Court below is liable to be modified as stated infra.

6. In fine, this Civil Revision Petition is allowed without costs at the stage of admission and the order dated 09.08.2011 passed in Execution Petition No.28 of 2008 in M.C.O.P.No.75 of 2004 by the Sub Court, Uthamapalayam is modified as follows:

The Sub Court, Uthamapalayam is directed to sell second lot through Court auction. The revision petitioner is at liberty to pay the amount mentioned in Execution Petition No.28 of 2008 at the time of sale. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge, Uthamapalayam

+One cc to M/s.PT.S.Narendravasan, Advocate, SR.No.37301

smn

rl/3 c- 16.11.2011