



C.R.P(MD)No.815 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.815 of 2023

and

CMP(MD)No.3731 of 2023

K.Sundararajan ...Petitioner/Petitioner/2nd Respondent
2nd Respondent/2nd Defendant

Vs.

1.A.Srinivasan ... Respondent/1st Respondent/
Petitioner/Petitioner/Plaintiff

2.P.Kalaiselvan ... 2nd Respondent/2nd Respondent/
1st Respondent/1st Respondent/1st Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition by setting aside the fair and decreetal order dated 08.12.2022 in R.E.A.No.3 of 2022 against E.A.No.93 of 2018 in E.P.No.177 of 2016 in O.S.No.195 of 2005 on the file of the learned Principal Sub Court, Karur.

For Petitioner : Mr.I.Velpradeep

ORDER

This petition has been filed to set aside the fair and decreetal order dated 08.12.2022 in R.E.A.No.3 of 2022 against E.A.No.93 of 2018 in E.P.No.177 of 2016 in O.S.No.195 of 2005 on the file of the learned Principal Sub Court, Karur.



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2.The petitioner is the second defendant in O.S.No.195 of 2005 filed by the first respondent against the second respondent herein. After the suit was initiated, the petitioner purchased a property from the second respondent (the sole defendant) by a sale deed dated 11.09.2006 during the pendency of O.S.No.195 of 2005. Hence, the petitioner was also impleaded as second defendant in the said suit. Thereafter, as the second defendant in the said suit/petitioner herein has filed a written statement on 08.07.2012. The suit was decreed as prayed for by the Trial Court on 08.01.2014. Aggrieved by the same, the petitioner filed A.S.No.42 of 2014 which was dismissed for non-prosecution on 04.11.2015.

3.According to the petitioner, an application for restoration of Appeal is still pending before the First Appellate Court. However, no steps have been taken. Mean while, the first respondent (plaintiff in O.S.No.195 of 2005) filed E.P.No.177 of 2016. In the said E.P, delivery was ordered. The first respondent also filed E.A.93 of 2018 in E.P.No. 177 of 2016 for possession of suit property. Against which, the petitioner has filed REA.No.2 of 2022 and REA.No. 3 of 2022 under Section 47 of CPC and for appointment of an Advocate Commissioner and the same was dismissed by the Subordinate Judge, Karur. Hence, the petitioner



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filed this present Civil Revision Petition.

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4.The specific case of the petitioner is that the petitioner has put up a construction over the suit schedule property whereas, the schedule in the plaint and in E.P proceedings indicates that the property is a vacant site property. It is submitted that the Trial Court is committed a grave error in rejecting the application filed by the petitioner under Section 47 of CPC for appointment of an Advocate Commissioner to give a report as to the presence of a construction put up by the petitioner.

5.The relevant portion of the impugned order reads as under:-

“இந்த கோருரிமை மனுவில் மனுதாரர் தனது வழக்கினை உரிய சாட்சிகள் மற்றும் சான்றாவணங்கள் மூலம் நிரூபிக்க வேண்டுமே தவிர அவருடைய மனுவை நிரூபிப்பதற்கு ஆணையர் நியமனத்திற்கு மனு தாக்கல் செய்ய முடியாது. மேலும், நிறைவேற்று மனுச் சொத்தின் தல அம்சங்கள் இவ்வழக்கில் தீர்வுக்குற்ற சங்கதியாக இல்லை. மேலும் நிறைவேற்றுகை மனு சொத்துக்கள் எது என்பதிலும் பிரச்சனை இல்லை. மேலும், ஆணையர் நியமனத்திற்கான மனுவானது சாட்சிகளை சேகரிப்பதற்காக (for collection of evidence) தாக்கல் செய்யப்பட்டு இருக்கக் கூடாது மற்றும் தாவா சொத்தில் உள்ள பிரச்சனைகளை தெளிவுப்படுத்துவதற்கு (To elucidate) தாவா சொத்தினை தல ஆய்வு செய்ய வேண்டியது தேவையாக உள்ளது என்பது நிலைநிறுத்தப்பட்ட சட்ட நிலையாக இருந்து வருகிறது. ஆகவே, மேற்காண் அறிந்தமைகளிலிருந்து மனுதாரரின் மனுவை தள்ளுபடி செய்வது நீதியின்பாற் உகந்ததாக இருக்கும் என்று இந்நீதிமன்றம் முடிவு காண்கிறது.

7.ஆகவே, இந்த மனு தள்ளுபடி செய்து



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உத்தரவிடப்படுகிறது.

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6. Reading of the written statement filed by the petitioner before the Trial Court after the petitioner was impleaded is indicate that there are no averments regarding alleged construction put up by the petitioner. The petitioner has merely defended himself before the Trial Court on the ground that time was the essence of contract hence time to be fixed for specific performance and that the petitioner was *bona fide* purchaser. The Trial Court has not accepted the plea of the petitioner. The petitioner has not taken any steps for setting aside the decree passed by the Trial Court on 08.01.2014 and A.S.No.42 of 2014 was also dismissed for default on 04.11.2015. Therefore, the attempt of the petitioner to stall the execution proceedings cannot be accepted. Therefore this Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
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To

- 1.The Sub Court,
Karur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.



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