

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)Nos.2488 of 2016 and 556 of 2018

and

C.M.P.(MD)No.11714 of 2016

C.R.P.(MD)No.2488 of 2016

Kannan ... Petitioner/ II Respondent/II Defendant

Vs.

1.Nallusamy ... 1st Respondent / Petitioner/ Plaintiff

2.Nallan (Deceased)

3.Thangamany ... 3rd Respondent / III Respondent/III Defendant

(Memo dated 02.02.2017 in USR.No.593 is

recorded as R2 died, and the petitioner and R3,

who are already on record are recorded as LR's

of the deceased R2, vide Court order, dated

17.04.2023.)

Prayer: Civil Revision Petition filed under Article 115 of the Constitution of India, against the order and decree dated 19.10.2016 made in E.P.No.61 of 2009 in O.S.No.79 of 1997, on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

For Petitioner : Mr.G.Gomathi Sankar

For Respondents : Mr.P.Rajagopalan for R1
: No appearance for R3
: R2 died

C.R.P.(MD)No.556 of 2018

Nallan (Deceased)

1.Kannan

2. Thangamany ... Petitioners/ Petitioners/ Defendants

Vs.

Nallusamy ... Respondent / Respondent/ Plaintiff

Prayer: Civil Revision Petition filed under Article 115 of the Constitution of India, against the order and decree dated 19.07.2017 made in unnumbered E.P.No. of 2017, on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

For Petitioners : Mr.G.Gomathi Sankar

For Respondents : Mr.P.Rajagopalan for R1
: No appearance for R3
: R2 died

COMMON ORDER

C.R.P.(MD)No.2488 of 2016 has been filed against the order, dated 19.10.2016 made in E.P.No.61 of 2009 in O.S.No.79 of 1997, on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

2. C.R.P.(MD)No.556 of 2018 has been filed against the order, dated 19.07.2017 made in unnumbered E.P.No. of 2017, on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

3. In C.R.P.(MD)No.2488 of 2016, the revision petitioner is the second defendant, before the trial Court. The first respondent is the plaintiff, and the third respondent is the third defendant before the trial Court.

4. In C.R.P.(MD)No.556 of 2018, the revision petitioners are the defendants, and the respondent is the plaintiff before the trial Court.

5. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

6. It appears that there was a decree against the defendant in O.S.No.79 of 1997 for the relief of specific performance. Since the said decree was not complied with, the plaintiff/decreed holder has filed an execution petition in E.P.No.72 of 2004. In which he ultimately got the decree executed by getting the sale deed in his name.

7. However, though the sale deed was obtained through Court, the decree holder did not deliver the vacant possession of the property. The same necessitated the plaintiff to file another execution petition in E.P.No.152 of 2004 for delivery of possession. More interestingly, at the stage of delivery of possession, the matter was referred to the Lok Adalat and culminated into an award dated 08.07.2008. For ready reference, the terms of the Lok Adalat award is extracted hereunder:

Terms of compromise

“மேற்படி நிறைவேற்றுதல் மனுவில் தீர்ப்புக்கடனாளிகள் நல்லான், கண்ணன் செலுத்த உள்ள தொகை ரூ.50,000/-த்தை (ஐம்பதாயிரம்) மூன்று மாத காலகெடுவுக்குள் மனுதார் / வாதி நல்லுச்சாமி பெற்றுக்கொள்வதென ஒப்புக்கொள்ளப்பட்டது மேற்படி தொகை முழுவதையும் மனுதார்/வாதி பெற்றுக் கொண்டபிறகு மனுதார்/வாதி பெற்ற கிரையத்தை ரத்து கொடுத்துவிடவேண்டியது. நீதிமன்ற வைப்பீட்டில் உள்ள ரூ.2,000/- (இரண்டாயிரத்தை) மனுதார்/வாதி பெற்றுக்கொள்ள வேண்டியது.

மேற்படி O.S.No.239/2006 வழக்கை அதன் வாதி
அய்யாக்கண்ணு வாபஸ் பெற்றுக்கொள்வதென முடிவு
செய்யப்பட்டது.

மேற்கண்ட விபரப்படி வழக்கை முடித்துக்கொள்ள உபய
தரப்பினர் ஒப்புக்கொண்டபடியால் மேற்படி நிறைவேற்றுதல் மனுவும்
வழக்கும் தள்ளுபடி செய்யப்படுகிறது. செலவு தொகை இல்லை.”

8. According to the Lok Adalat award, three months time was granted to the defendant/judgment debtor to pay a sum of Rs.50,000/-. In the event of payment of the said amount, then the plaintiff/decreed holder agreed to cancel the sale deed and to withdraw the suit in O.S.No.79 of 1997. But fortunately or unfortunately, the defendant was not in a position to pay the amount until 19.01.2011, though he was directed to pay the amount within three months from the date of the Lok Adalat award qua from 08.07.2008.

9. It appears from the record that, since no payment was forthcoming in terms of the Lok Adalat award dated 08.07.2008, the plaintiff again on 27.07.2009, has filed yet another execution petition in E.P.No.61 of 2009 for the relief of delivery of possession, since, the earlier E.P.No.152 of 2004 for the relief of delivery of possession resulted in the Lok Adalat award.

10. When the second execution petition in E.P.No.61 of 2009 was taken up before the Court below, it was argued by the defendant that the conditions laid down in the Lok Adalat award has been complied on 19.01.2011. Therefore, the plaintiff is not entitled for delivery of possession and that he should execute the deed of re-sale in favour of the defendants. However, the Court below has not accepted the contention of the defendants herein and has ordered for the delivery of possession vide order dated 19.11.2016.

11. It is also relevant to mention here that, based upon the Lok Adalat award, dated 08.07.2008, the defendants has filed a separate execution petition for directing the decree holder to comply the Lok Adalat award. However, the said execution petition has been returned without numbering. The same is also under challenge in C.R.P.(MD)No.556 of 2018.

12. Now, the short point to be considered is, whether the Lok Adalat award, dated 08.07.2008, will prevail over the decree passed in

O.S.No.79 of 1997, dated 21.01.1997. It is well settled principles of law that, in a suit for specific performance, until the decree is fully executed, the same is like a preliminary decree. Therefore, the Court will have control over the decree till the decree is fully satisfied.

13. Here in O.S.No.79 of 1997, by virtue of the Lok Adalat award a new decree came into existence, on 08.07.2008. However, the enforceability of this Lok Adalat award is subject to the compliance of the terms of the said award otherwise the original decree, dated 25.09.2003, will be intact.

14. As extracted herein above, as per the terms of the Lok Adalat award, Rs.50,000/- has to be paid to the plaintiff within a period of three months from 08.07.2008. Admittedly, the said amount has not been paid to the plaintiff. However, the same has been deposited before the Court, during January – 2011, almost after a period of 2 ½ years. But, the said deposit was made without any order for extension of time.

15. It is pertinent to mention here that, in the meanwhile the plaintiff -decree holder has filed another Execution Petition in E.P.No.61 of 2009, which is impugned in this Civil Revision Petition, on 27.07.2009. In which, the respondent has filed a counter on 15.06.2010. Wherein, he did not think fit to say anything about the compliance of the Lok Adalat award, dated 08.07.2008. But, curiously, took a defence that the Execution can be made only as per the Lok Adalat award.

16. At this juncture, it is relevant to refer Section 28 of the Specific Relief Act. The same is extracted herein :

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract

either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

17. According to Section 28 (1) of the Specific Relief Act, if the party does not comply the terms of the agreement, is entitled to apply to rescind of contract. Admittedly, no application for rescission of the Lok Adalat award was filed by the plaintiff. At this juncture, it assume importance to mention that, though the judgment debtor has deposited amount as per Lok Adalat award, during January – 2011, for such a delayed payment no permission was sought for from the Court. As such, the said payment is bad in law, under the following two grounds:

(i) the amount has been paid after long delay of 2 ½ years.

(ii) For such delayed payment, no permission qua no extension of time was sought for by the respondent. Be that as it may.

18. With the above background, if we look at the facts of the case, in the prism of Section 28(1) of the Specific Relief Act, we would

explicitly found grounds to rescind the terms of the Lok Adalat award, as the respondent did not comply the same to its letter and spirit, and has not filed any application for extension of time.

19. The learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court reported in **2005-6-SCC-478 (P.T.Thomas V. Thomas Job)** and would contend that if any time limit specified in Lok Adalat award, the Court is competent to extend the time in appropriate cases. The above reported judgment has also further held that the award of Lok Adalat is final and permanent, which is equivalent to decree executable. This Court absolutely has no grievance in respect of the legal proposition relied by the respondent and enunciated in the above judgment.

20. The learned counsel for the respondent has also relied upon the judgment reported in **2009-2-ILR (Kerala)-620 (Ambika Rajan V. Basheera Beevi)**, **2017(174)AIC-566 (Smti.Twes Nongseij V.State of Meghalaya)** and would submit that the Lok Adalat award is binding. The binding nature of the Lok Adalat award is well settled, and this Court also

has no semblance of doubt over the said legal position. However, the issue surfaces before this Court is, when there was the direction to the respondent to pay the amount within a particular period of time, and when the same has not been complied, what is the effect of the original decree dated 25.09.2003 passed in the suit.

21. In this regard, this Court would like to refer the judgment of the Hon'ble Supreme Court reported in **2009-8-MLJ-417(SC) (Bhupinder Kumar V. Angrej Singh)**. In the above judgment, the Hon'ble Supreme Court after following the decision in **K.Kalpana Saraswathi V. P.S.S.Somasundaram Chettiar reported in (1980)-1-SCC-630** and also after following the decision in **Kumar Dharendra Mullick and Ors. V. Tivoli Park Apartments (P)Ltd., reported in (2005)-9-SCC-262**, held that the decree in the suit for specific performance is like a preliminary decree and the suit would continue and under the control of the Court till either party moves for passing final decree. The Hon'ble Supreme Court has also held that though the Court has power to extend time, the same has to be exercised by applying the principles of equity to both parties.

22. Here, in this case, though a decree was originally passed on 25.09.2003 and subsequently, a sale deed was also obtained by filing Execution Petition through Court, vide order, dated 24.11.2004. After that, an application for delivery of possession was also filed. Only at that circumstances, a compromise was reached vide Lok Adalat award, dated 08.07.2008. Even, the said award is conditional in nature. However, there is no default clause to the award.

23. In our case, since the respondent did not comply the award, immediately, the petitioner has filed an application for delivery of possession. Admittedly, on the date of filing of the Execution Petition, the respondent did not pay any amount as per the Lok Adalat award. In a case reported in **1999-1-SCR-349 (V.S.Palanichamy Chettiar Firm V. C.Alagappan and Anr.)**, the Hon'ble Supreme Court has held that in order to decide the issue of rescission of contract, the conduct of the parties and the attending circumstances should also be taken into consideration. Here, the conduct of the petitioner in filing the second execution petition during 2009, assumes importance.

24. Thus, this Court is of the view that from the filing of the Execution Petition in E.P.No.61 of 2009, for the deliver of possession on second time would emphatically and explicitly manifest the rescission of the contract stipulated in the Lok Adalat award, dated 08.07.2008. The rescission of contract has been further fortified by the act of omission by the respondent in not paying the amount as stipulated in the Lok Adalat award, within the stipulated time. Though the amount has been deposited later on after a period of 2 12/ years, admittedly, for such delayed payment, no permission was sought for by the respondent. Therefore, this Court is not in a position to accept such a belated deposit of the amount as a legal deposit.

25. From the above detailed discussion, what cumulatively emerges is that, though there was a subsequent decree by way of Lok Adalat award, dated 08.07.2008, since the conditions stipulated in the award was not duly complied with, the same has been rescinded by the petitioner by his conduct. As a result of which, the decree dated 25.09.2003 will prevail over the Lok Adalat award and liable to be enforced. Here, as already discussed herein above, a sale deed was registered in the name of

the plaintiff. Therefore, naturally, he is entitled to have the delivery of possession, being the owner of the property. Thus, this Court could not find any infirmity in the order passed by the Court below.

26. In the result, CRP(MD)No.2488 of 2016 is **dismissed**.

CRP(MD)No.556 of 2018.

27. In view of the dismissal of the C.R.P(MD)No.2488 of 2016, the C.R.P(MD) No.556 of 2018 is also liable to be dismissed.

28. Hence, C.R.P(MD) No.556 of 2018 is **dismissed**.

Consequently, connected Miscellaneous Petition is closed.

04.09.2023

NCC : Yes/No

Index :Yes/No

Ls

To

1.The District Munsif cum Judicial Magistrate,

Vedasandur.

2.The Section Officer,

VR Section, Madurai Bench of Madras High Court,

Madurai.

C.R.P.(MD)Nos.2488 of 2016 and 556 of 2018

C.KUMARAPPAN.,J.

Ls

order made in
C.R.P.(MD)Nos.2488 of 2016 and 556 of 2018

04.09.2023