



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.M.S.A.No.26 of 2015 and
M.P.No.1 of 2015

J.Rajalakshmi

...Petitioner

vs.

Lakshmi

...Respondent

Civil Miscellaneous Second Appeal filed under Order 21 Rule 97 r/w 100 of the Code of Civil Procedure against the order and decree dated 31.03.2015 passed by the Hon'ble Subordinate Judge, Poonamallee in C.M.A.No.28 of 2014 confirming the order and decree dated 24.07.2014 passed by the Hon'ble District Munsif, Ambattur in E.A.No.134 of 2012 in E.P.No.43 of 2011 in O.S.No.98 of 1982.

For Petitioner : Mr.H.Suresh Baabu

For Respondent : Mr.A.Palaniappan

J U D G M E N T

The revision petitioner is the appellant in C.M.A.No.28 of 2014 on the file of Sub-Court, Poonamallee. The said appeal was filed questioning the fair and decreetal order dated 24.07.2014 passed by the learned District Munsif, Ambattur in E.A.No.134 of 2014 in E.P.No.43 of 2011 in Ch.O.S.No.98 of 1982.

2. The respondent herein is the decree holder in O.S.No.98 of 1982. She filed O.S.No.98 of 1982 for specific performance against the defendants therein. The suit was decreed on 25.03.1983 by the Sub-Court, Chengalpattu. The appeal filed against the said judgment and decree in A.S.No.621 of 1983 was dismissed for default on 23.08.1994.

3. Thereafter, the respondent/Decree Holder filed E.P.No.73 of 2007 directing the third respondent therein to execute and register the sale deed in her favour in respect of "B" Schedule property, which is a portion of the suit property. The total extent of land concerned in O.S.No.98 of 1982 is 7480 sq.ft.. The Executing Court executed Sale Deed in favour of the respondent/Decree Holder on 27.01.2011 in respect of the property concerned in this case.

4. Pending E.P.No.73 of 2007, the 2nd Judgment Debtor filed C.R.P.No.2094 of 2008 before this Court. During the pendency of the said CRP, the Decree Holder and the 2nd Judgment Debtor entered



into a compromise and conveyed a portion of the suit property measuring 5200 Sq.ft, to M/s.Vaniga Vysiyar Improvement Society, as per registered Sale Deed dated 19.11.2008. Recording the same, the said CRP was closed on 03.11.2008.

WEB COPY

5. For execution of Sale Deed in respect of the balance 2280 sq.ft, the respondent/Decree Holder filed E.P.No.73 of 2007 for execution of Sale Deed as stated above. Since the Judgment Debtors have failed to execute the sale deed in favour of the Decree Holder, the Executing Court has executed sale deed in favour of the Decree Holder. This matter relates to property measuring 2280 sq.ft referred to above.

6. Though Sale Deed was executed by the Executing Court, the respondent/Decree Holder is not able to enjoy the fruit of the decree and hence, the respondent/Decree Holder filed E.P.No.43 of 2011 under Order 21 Rule 35 CPC to order delivery of the suit property. Since the revision petitioner is the obstructor therein, the respondent/Decree Holder filed E.A.Nos.107, 108, 109 and 110 for 2012 for Police Aid, break open, disconnection of electricity service and removal of superstructure respectively.

7. Those EAs namely E.A.Nos.107 to 110 of 2012 were allowed. Though those applications were allowed, the respondent/Decree Holder was not put in possession due to the obstruction made by the revision petitioner.

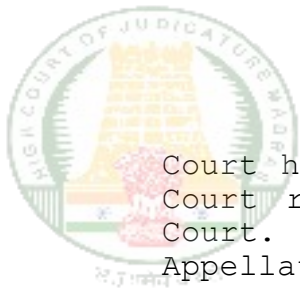
8. Hence, the respondent/Decree Holder filed E.A.No.134 of 2012 in E.P.No.43 of 2011 to remove the obstruction caused by the revision petitioner.

9. The Trial Court viz., District Munsif Court, Ambattur passed an order dated 24.07.2014 allowing E.A.No.134 of 2012 in E.P.No.43 of 2011 in O.S.No.98 of 1982. Thereafter, the revision petitioner filed C.M.A.No.28 of 2014 before the Sub-Court, Poonamallee challenging the aforesaid order dated 24.07.2014 in E.A.No.134 of 2014.

10. The Appellate Court rejected the said C.M.A.No.28 of 2014 on 31.03.2015. The aforesaid facts are not in dispute.

11. The learned counsel for the revision petitioner has vehemently contended that the Execution Petition namely E.P.No.43 of 2011 for possession was filed beyond Limitation Period and hence, the Appellate Court committed grave error in entertaining the same and putting back the respondent/Decree Holder in possession. According to the learned counsel, no Execution Petition could be filed after 12 years.

12. In fact, the above said contention was raised before the Appellate Court and the Appellate Court considered the same and rejected the said contention. Taking into account the whole history of the case and also the fact that the EP was filed within 12 years from the date of execution of Sale Deed, the Appellate



Court held that Execution Petition is maintainable. The Appellate Court relied on the decision of the Apex Court as well as this Court. I am in agreement with the said conclusion reached by the Appellate Court.

WEB COPY

13. Further, it is not out of place to mention that the revision petitioner filed O.S.No.52 of 2012 before the District Munsif Court, Ambattur for permanent injunction in respect of the same property. In the interim application, the revision petitioner pleaded that there was an oral sale agreement between her husband and one V.Murugan during 1997 in respect of the property concerned in this case and the family of the revision petitioner was in possession and enjoyment of the suit property since the said oral agreement. According to the revision petitioner, sale deed was executed by the third defendant in O.S.No.98 of 1982 on 06.07.2005, pursuant to the aforesaid oral agreement in 1997.

14. Yet another important aspect is that the revision petitioner purchased the property pendente lite. If the vendor has no title pursuant to the decree passed in O.S.No.98 of 1982, which was confirmed in the appeal, the revision petitioner cannot claim better title over the property.

For all the aforesaid reasons, there is no merit in this appeal. The Civil Miscellaneous Second Appeal fails and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

svki
To

- 1.The Sub-Judge, Poonamalle.
- 2.The District Munsif, Ambattur

+1cc to Mr.H.Suresh Baabu, Advocate, S.R.No.49333
+1cc to Mr.A. Palaniappan, Advocate, S.R.No.49586

GJ(CO)
EU(05/10/2015)

C.M.S.A.No.26 of 2015