

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.R.P. (NPD) No.125 of 2006

V.C.Shantha

.. Petitioner

Vs

1.P.J.Parisha Begum (deceased)

2.T.A.M.Rashid Khan

3.Mohamed Jahari

4.Hathija Begum

5.Mohamed Zubari

6.Abdul Jabhari

7.Mohamed Mustapha

8.Sabier Rani

9.Juberia Parveen

.. Respondents

(R2 to R9 are brought on record
as legal heirs of the deceased sole respondent
vide order of this court dated 20.9.2010 made
in CMP Nos.636 to 638 of 2008)

This Civil Revision Petition is filed against the order dated 8.9.2004 made in E.A.No.2002 of 2004 in E.P.No.376 of 2003 in O.S.No.6947 of 1974 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Udayakumar

For R7 : Mr.M.Prabhakar

For other respondents : Notice served through
paper publication, no representation.

ORDER

The decree holder/plaintiff is the petitioner in this Civil Revision Petition.

2. Here is the case, wherein, the plaintiff filed the suit for specific performance, not only against the defendants 1 to 5, who are the parties to the suit sale agreement, but also against the sixth defendant, who is the purchaser of the property subsequent to the suit sale agreement. The suit was after due contest by all the defendants, decreed against the defendants 1 to 5 for execution of sale deed and for delivery of possession of the suit property and also for directing the sixth defendant who was held to be purchaser for value but with notice of the prior sale agreement to join in the conveyance so as to pass a clear title to the plaintiff any by directing the first defendant to get release of the suit property from the mortgager. The trial court also decreed the suit for alternative relief of return of purchase money with interest at 12% p.a from respective dates of payment upto date and by creating a charge on the suit property for the due payment of the said sum with a right of priority over the mortgage and sale in favour of the sixth defendant. The trial court judgment and decree was challenged by way of appeals not only by the defendants 1 to 5 who

are the parties to the agreement, but also by the sixth defendant, who claims himself to be the bonafide purchaser of the suit property after the suit sale agreement.

3.The lower appellate court independently dismissed both the appeals in AS.No.154 of 1988 filed by the defendants 3 to 6 and AS.No.321/1980 filed by the sixth defendant/subsequent purchaser. While AS.No.154 of 1988 was dismissed by the lower appellate Court, the lower appellate court in AS.No.321/1980 modified the decree of the trial court in O.S.No.6947 of 1974 not only for specific performance of the suit sale agreement, but also to put the plaintiff in possession of the plaint schedule of property as sought not in the suit and declined the alternative relief for damages by way of refund of purchase money.

4.Thereafter, the plaintiff/decreed holder filed EP.No.1650/1999 for getting the sale deed executed and the Execution Petition was disposed of on 7.1.2003 after execution of the sale deed by the court concerned. In pursuance of the same, the decreed holder filed EP.No.376/2003 against the defendants 1 to 5 and the legal heirs of the deceased sixth defendant. Pending E.P.No.376/2003, the 10th

respondent in the Execution Petition, who is one of the legal heirs of the sixth defendant filed E.A.No.2002/2004 to dismiss EP on the ground that there was no decree for delivery of possession against the sixth defendant, as such, EP.No.376/2003 for delivery of possession filed against the deceased sixth defendant and his legal heirs was not maintainable in law. The relief sought for in the Execution Application was seriously opposed by the plaintiff/decreed holder.

5.The Executing court, after hearing both sides, allowed the Execution Application by accepting the case of the 10th respondent/judgment debtor in EP.376/2003 who is one of the legal heirs of the deceased judgment debtor/6th defendant that the Execution petition was not maintainable without obtaining any decree for delivery of possession against the sixth defendant/purchaser. Aggrieved by the same, the decreed holder/plaintiff is now before this court by way of present Civil Revision Petition.

6.Heard the learned counsel for the petitioner and the seventh respondent and perused the materials placed before this Court. In spite of substituted service to other respondents, there is no representation on behalf of other respondents either in person or

through their pleader, as such, this court after recording their absence proceeded to dispose of the present revision on merits.

7.The facts as stated above would reveal that originally there was a decree for specific performance as well as for delivery of possession against the defendants 1 to 5 and the sixth defendant was directed to join in the conveyance of the property in favour of the plaintiff and for alternative relief, directing the defendants 1 to 5 to return the purchase money by way of damages. The trial court decree was subsequently modified in AS.No.321 of 1980 filed by the deceased sixth defendant for specific performance of the agreement and for delivery of possession. Thereafter, the decree holder has come forward with the first Execution Petition for execution of the sale deed and the second Execution Petition for delivery of possession. While the first Execution Petition was allowed and the sale deed was executed, in pursuance of the same, the second Execution Petition for delivery of possession was dismissed on the sole ground that there was no decree for delivery of possession against the sixth defendant. As rightly argued by the learned counsel for the petitioner/decreed holder, the finding so rendered by the Executing court is not in consonance with the degree granted by the trial court as modified by the Appellate Court.

8.As rightly pointed out by learned counsel for the plaintiff/decreed holder, the plaintiff sought the relief for delivery of possession and the same was also granted by the trial court as well as by the lower appellate court and the sixth defendant being one of the judgment debtors and the sixth defendant having been directed to join the parties to the agreement i.e., the defendants 1 to 5, in executing the sale deed, the decree for delivery of possession is also binding on her and the main decree granted by the trial court having been confirmed by the lower appellate court in the appeal filed by the sixth defendant, the sixth defendant and his legal heirs are bound by the findings of the trial court and the relief granted by the trial court. If that is so, the objection raised by the legal heirs of the sixth defendant at the execution stage that the execution petition for delivery of possession is not maintainable, has no legal legs to stand.

9.The learned sister and brother judges of this court in their respective judgments reported in (i)**2007 (3) CTC 529 (S.Sampoornam and another v. P.V.Kuppuswamy and 8 others)** and (ii)**2012 (1) CTC 823 (Krishnamurthy Gounder v. Venkatakrishnan and others)** have under identical circumstances, set aside the similar order thereby rejecting the Execution Petition

passed by the Executing Court. The learned Sister Judge in the first judgment has gone to the extent of saying that the decree holder cannot be denied the relief for possession merely because he did not ask for the same in his plaint. The learned sister Judge, by following the decision of the Hon'ble Supreme Court in **Babu Lal v. M/s.Hazari Lal Kishori Lal, AIR 1982 SC 818**, was of the view that when the court grants a decree for specific performance, what it "promises to do is all such things as the parties would have been bound to do had this been done without the intervention of the Court". Therefore, when the decree for execution of a sale deed is realised, it pre-supposes that the decree holder would be put in possession. The learned sister judge in para 23 of the judgment, referred to another judgment of this Court in **K.M.Rajendran v. Arul Prakasam, 1998 (3) CTC 25: AIR 1998 Mad 336** wherein it is held that in a suit for specific performance of an agreement to transfer an immovable property, once a decree for specific performance is granted, it includes the term for delivery of possession and it is unnecessary for the court to direct such delivery of possession expressly because the Court was directing the enforcement of the entire agreement, including the agreement to deliver possession. The learned sister Judge in para 25 of the judgment recollected the difficulties faced by the decree holder in getting the

fruits of the decree for nearly 20 years and held that successive vendors cannot be allowed to raise the same issue again and again. It is held so by pointing out the observation of the Bombay High court in **Prataprai Trambaklal Mehta v. Jayant Nemchand Shah, AIR 1996 Bom. 296**, that "...there would be no end to litigation and justice would be defeated", thereby defeating the right of the decree holder forever.

10.The learned brother judge in the second judgment, after referring to the judgment of the Apex Court in **Babu Lal v. M/s.Hazari Lal Kishori Lal, AIR 1982 SC 818**, has categorically held that the right accrues to purchaser to seek possession after obtaining sale deed.

11.In this connection, the observations of the privy council in the case of **The General Manager of the Raj Durbhnga under the Court of Wards v. Maharajah Coomar Ramaput Singh** and the Hon'ble Apex Court in some of the decisions referred to in the latest decision of the Hon'ble Supreme Court in **CDJ 2013 SC 499 (Satyawati v. Rajinder Singh and another)** are to be necessarily looked into. The Privy council in the aforesaid decision observed that

the difficulties of a litigant in India begin when he obtained a decree.

12.It is observed in the case of **Kuer Jang Bahadur v. Bank of Upper India Ltd., Lucknow (AIR 1925 Oudh 448)** while quoting the above cited judgment of the Privy council, that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights".

13.The Hon'ble Apex Court in **Babu Lal v. M/s.Hazari Lal Kishori Lal and others (1982) 1 SCC 525** observed that "procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.....".

14.It is observed by Supreme Court in the case of **Marshall Sons & Co. (I) Ltd v. Sahi Oretrans (P) Ltd & another (1999) 2 SCC 325**, ".....it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we

do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property its execution takes long time.....”

15.The Apex Court in the case of **Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna and others (2009) 9 SCC 689** observed that “in the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a

party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant".

16.The Hon'ble Supreme Court, in the latest decision in **CDJ 2013 SC 499 Satyawati v. Rajinder Singh and another**, (cited supra) by quoting the above stated observations, has expressed "the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain."

17.Applying and sharing the view and anxiety of the Privy council and other High Court and the principles laid down by the Apex court as stated above to the facts of the present case, this court is of the considered view that long litigation which was decided in favour of the petitioner herein, has to be finally concluded in favour of the petitioner/plaintiff so as to get effective justice. For the said purpose, the finding rendered by the Executing Court that the Execution Petition

is not maintainable for want of any decree for possession, is hence liable to be set aside.

18. In the result, this Civil Revision petition is allowed by setting aside the order of the Executing Court in E.A.No.2002/2004 in EP.No.376/2003 in O.S.No.6947/1974 and the Execution Petition is allowed for delivery of possession. No costs.

21.04.2015

Index:Yes/No
Internet:Yes/No
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To

The X Assistant City Civil Court, Chennai.

K.B.K.VASUKI, J.

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