

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1259 of 2013

and M.P.No.1 of 2013

1. Chinnaraj Gounder
2. Ellammal

.... Petitioners

vs

1. Thavamani
Mannar Mudaliar (died)
2. Kanakammal
3. Mani
4. Kala
5. Devaraj
6. Mohan (died)
7. Dayalan (died)
8. Mohana
9. Minor Tamizhselvi
10. Minor Priya
11. Minor Sowmiya

(Respondents 9 to 11 represented by their
natural guardian 8th respondent mother)

12. Meera

(cause title amended vide order of the court
dated 16.8.2013 made in MP No.2 of 2013
in CRP (NPD) No.1259 of 2013

.... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of
India against the delivery application in E.A No.142 of 2003 in E.P.No.273 of

1990 in O.S.No.311 of 1981 of the file of District Munsif Court, Arni.

For Petitioners : Mr.P. Ganapathy
For R.1 to R.5 : Ms.P.T Asha for
M/s Sarvabhauman Associates

ORDER

Challenging the fair and final order passed in E.A No.142 of 2003 in E.P.No.273 of 1990 in O.S.No.311 of 1981 of the file of District Munsif Court, Arni, the Judgment Debtors have filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.311 of 1981 for recovery of money and the suit was dismissed by the trial Court. On appeal, filed by the plaintiff in A.S.No.5 of 1988, the lower Appellate court reversed the judgment and decree of the trial court and allowed the Appeal on 18.1.1990.

3. Pursuant to the decree passed in O.S.No.311 of 1981, the plaintiff filed an Execution Petition in E.P.No.273 of 1990 for sale of the property belonging to the judgment debtors. The property was brought to sale and sold in the Court auction on 26.4.1995. The plaintiff, with the leave of the Execution Court, purchased the property in the Court Auction on 26.4.1995. Thereafter, the judgment debtors filed an application under Order 21 Rule 90 of Civil Procedure Code in E.A.No.246 of 1996. The

Executing Court allowed the application filed by the judgment debtors, which was also confirmed by the Subordinate Court, Arni in C.M.A.No.4 of 1996.

4. Similarly, the judgement debtors filed a suit in O.S.No.284 of 1995 to permit them to deposit the loan amount together with interest amounting to Rs.8,170.20 and for raising the charge in respect of the property and also restraining the plaintiff from bringing the property for sale. The trial Court decreed the suit, which was also confirmed by the lower Appellate Court/Subordinate Court, Arni in A.S.No.78 of 1996. Against the judgment and decree passed in A.S.No.78 of 1996 and in C.M.A.No.4 of 1996, the plaintiff preferred Second Appeal in S.A.No.1451 of 2000 and Civil Revision Petition in C.R.P.No.2713 of 2000 respectively before this Court. This Court, by Common Judgment dated 19.07.2002 set aside the judgment and decree passed in A.S.No.78 of 1996 and dismissed the suit.

5. It is pertinent to note that the Execution Court had allowed the application in E.A.No.246 of 1995 filed under Order 21 Rule 90 of Civil Procedure Code solely on the ground that the judgment debtors had obtained decree in O.S.No.284 of 1995. Since this Court had set aside the judgment and decree passed in A.S.No.78 of 1996 and dismissed the suit in O.S.No.284 of 1995, this Court closed the Civil Revision Petition in C.R.P.No.2713 of 2000. Therefore, from the judgment passed in Second Appeal in S.A.No.1451 of 2000 and Civil Revision Petition in CRP No,2713 of

2000, it is clear that the order passed in E.A.No.246 of 1995 was set aside.

6. After disposal of the Second Appeal and the Civil Revision Petition on 19.7.2002, the Decree Holder filed an application in E.A.No.142 of 2003 under Order 21 Rule 95 of Civil Procedure Code for delivery of possession. The said application is being contested by the judgment debtors.

7. Ms.P.T. Asha, learned counsel appearing for the respondents/decreed holders submitted that earlier, the revision petitioners have challenged the application, filed under Order 21 Rule 89 of Civil Procedure Code in C.R.P.SR.No.102971 of 2003, which was rejected by this Court by order dated 3.12.2012.

8. It is settled position that the judgment debtor is bound by the decree passed by the Court below. In the case on hand, inspite of obtaining a decree on 18.1.1990, the judgment debtors have not paid the decree amount. The property was sold on 26.4.1995 and even after a lapse of nearly twenty years, the decree holders are not in a position to take possession of the property. The suit was filed in the year 1981 and even after nearly 35 years, the dispute has not reached finality. The Execution Court is bound by the decree passed in the Suit.

9. In these circumstances, I do not find any ground to strike out the application in E.A.No.142 of 2003 in E.P.No.273 of 1990 in O.S.No.311 of 1981 on the file of District Munsif Court, Arni. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected MP is closed.

10. The District Munsif, Arni is directed to dispose of the application in E.A.No.142 of 2003 in E.P.No.273 of 1990, on merits and in accordance with law, within a period of four weeks from the date of receipt of copy of this order.

10-12-2015

sr

Index:no
website:yes

Note: Issue order copy on 14.12.2015

To

The District Munsif Court, Arni

M. DURAISWAMY,J.,

sr

CRP (NPD) No.1259 of 2013

10-12-2015