

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3896 of 2015

and

M.P.No.1 of 2015

K.N.Ramachandiran

.. Petitioner

Vs

Varadappa Naidu (Died)

B.K.Subburoyalu Naidu (Died)

1.Pankajam

2.Chandiran

3.Delli

4.Jamuna

5.Ravi

6.Latha

7.Suresh

8.Sujatha

9.Rajammal

10.C.Pagirathi

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.02.2015 made in E.A.No.6 of 2009 in E.A.No.6 of 2009 (S.C., Poonamallee E.A.No.85 of 2000) in E.P.No.7 of 2009 (S.C., Poonamallee E.P.No.149 of 1991) on the file of the Subordinate Court, Tambaram.

For Petitioner : Mr.T.Saikrishnan
for M/s.Sair Bharath and Ilan
For Respondents : Mr.A.Babu

ORDER

The Civil Revision Petition is filed against the order dated 25.02.2015 made in E.A.No.6 of 2009 in E.A.No.6 of 2009 (S.C., Poonamallee E.A.No.85 of 2000) in E.P.No.7 of 2009 (S.C., Poonamallee E.P.No.149 of 1991) on the file of the Subordinate Court, Tambaram.

2.The respondents as plaintiffs filed a suit in O.S.No.207 of 1985 for specific performance against the petitioner and four others. A decree has been passed on 08.08.1988. The plaintiffs filed an application for execution of the sale agreement. At this juncture, the petitioner/5th defendant filed an application to declare that the decree dated 08.08.1988 is void and unenforceable by stating that he was impleaded as 5th defendant and he had further stated that he purchased the property from the defendants 1 to 3 pertaining to only S.No.85/4 and not the suit property in S.Nos.85/2 and 3. The Trial Court after considering all the aspects has dismissed the application. Against which, the present Civil Revision Petition has been preferred.

3.Learned counsel for the petitioner submitted that the execution petition against the petitioner is not maintainable since he has not purchased the suit property and hence, the execution petition has to be dismissed as

against him. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

4. Resisting the same, the learned counsel for the respondents submitted that the suit property is in S.Nos.85/2 and 3 measuring an extent of 97 cents. He further submitted that in the application filed by the petitioner, he has fairly conceded that he had purchased 47 cents in S.No.85/4 and on that basis, the Trial Court has dismissed the application. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The admitted facts are that the respondents as plaintiffs filed a suit for specific performance on the basis of the sale agreement executed by the defendants 1 to 3 in respect of S.Nos.85/2 and 3 measuring 97 cents in Chelgapptu District (Kancheepuram District) Saidapet Taluk (Tambaram Taluk) in Pallavram Vilage. The petitioner has filed an application to declare the decree dated 08.08.1988 is void and unenforceable by stating that after the sale agreement, he has purchased the suit property. But admittedly an exparte decree has been passed in the year 1988. In the year 2001, execution

petition has been filed. In the Section 47 application filed by the petitioner herein, the following relief has been sought for:

“to declare that the decree dated 08.08.1988 is void and unenforceable and the proceedings in the above E.P.No.149/1991 is to be stayed.”

7. But here according to the petitioner, he has purchased the property in respect of S.No.85/4. He would also submit that he is not the owner of the property in S.Nos.85/2 and 3. In such circumstances, the Trial Court has rightly considered the same in paragraph No.9 of its order and dismissed the application. Merely because the petitioner is not the owner of the suit property, the decree shall not be set aside since an ex parte decree has been passed only in respect of S.Nos.85/2 and 85/3. Hence, I do not find any reason to interfere with the finding of the Trial Court and the same is hereby confirmed. Consequently, the Civil Revision Petition deserves to be dismissed as devoid of merits.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2016

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The Subordinate Court, Tambaram.

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