

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.4682 of 2015  
and M.P.No.1 of 2015

1.Sree Gokulam Chit and Finance Co. (P) Ltd.,  
by its Managing Director A.M.Gopalan,  
No.356, Arcot Road,  
Kodambakkam, Chennai - 600 024.

2.A.M.Gopalan

3.The Manager,  
Sree Gokulam Chit and Finance CO. (P) Ltd.,  
Pollachi Branch,  
M.K.S. Branch, First Floor,  
No.42, New Scheme Road, Pollachi.

... Petitioners

Vs

1.G.Vijayakumar

2.The Sub-Registrar,  
Sub-Registrar Office,  
Pollachi Road, Pollachi.

... Respondents

Civil Revision Petition under Article 227 of the Constitution of India  
against the order passed in E.P.No.62 of 2014 dated 23.11.2015 by allowing  
O.S.No.92 of 2011 on the file of the District Munsif Court, Pollachi.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondents : Mr.R.Lakshmi Narasimhan (R1)

R2 - no appearance

**ORDER**

Challenging the order passed in E.P.No.62 of 2014 in O.S.No.92 of 2011 on the file of the District Munsif Court, Pollachi, the Judgment Debtors 1 to 3 have filed the above Civil Revision Petition.

2.The 1<sup>st</sup> respondent/plaintiff filed a suit in O.S.No.92 of 2011 for mandatory injunction to direct the defendants 1 to 3 to cancel the Mortgage Deed dated 16.05.2002 executed by the plaintiff in their favour; for mandatory injunction to hand over the original documents to the plaintiff; for further direction to the 4<sup>th</sup> defendant in case of failure on the part of the defendants 1 to 3, to cancel the said Mortgage Deed and for damages from the defendants 1 to 3.

3.After contest, the trial Court decreed the suit. So far as Clause-4 of the decree is concerned, the defendants 1 to 3, who are the revision petitioners herein were directed to hand over the original Sale Deed of the plaintiff relating to the plaint mentioned property and its original parent documents.

4.The judgment and decree passed by the trial Court in O.S.No.92 of 2011 was challenged by the defendants in A.S.No.1 of 2013 on the file of the Subordinate Court, Pollachi, which was also dismissed by the Lower Appellate Court. Against the concurrent findings of the Courts below, the defendants 1 to 3 filed a Second Appeal in S.A.No.1400 of 2013 and this Court, by its judgment dated 20.08.2014, confirmed the judgments and decrees of the Courts below and dismissed the Second Appeal, against which the defendants preferred an Appeal before the Hon'ble Supreme Court of India in Special Leave to Appeal (c) No.5901 of 2015 and the Hon'ble Supreme Court, by order dated 06.04.2015, dismissed the Special Leave Petition. Thereafter, the respondent/Decree Holder filed an Execution Petition in E.P.No.62 of 2014 before the District Munsif Court, Pollachi for arrest of the Judgment Debtors. The Executing Court, by order dated 23.11.2015, ordered arrest, against which the Judgment Debtors have filed the above Civil Revision Petition.

5.When the Civil Revision Petition came up for admission before this Court on 11.12.2015, the learned counsel appearing for the petitioners submitted that the original documents submitted by the 1<sup>st</sup> respondent/ plaintiff were lost in their office and therefore, they are not in a position to

return the original documents as directed by the trial Court. Further, while ordering interim stay, this Court directed the petitioners to deposit a sum of Rs.10,00,000/- to the credit of E.P.No.62 of 2014. In compliance of the order dated 11.12.2015, the petitioners had deposited the said sum of Rs.10,00,000/- to the credit of E.P.No.62 of 2014 on the file of the District Munsif Court, Pollachi.

6. When the matter was taken up for hearing today, the learned counsel appearing for the petitioners submitted that the petitioners are not in a position to comply with the direction of the trial Court for the reason that the original documents were lost in the office of the 3<sup>rd</sup> petitioner, therefore, the 1<sup>st</sup> respondent/plaintiff may be compensated for the loss incurred to the loss of the original documents.

7. The learned counsel appearing for the 1<sup>st</sup> respondent/Decree Holder submitted that a reasonable compensation may be awarded to the 1<sup>st</sup> respondent/plaintiff.

8. The total extent of suit property measured to an extent of 57 cents. Out of this 57 cents, the 1<sup>st</sup> respondent/plaintiff had sold an extent of 43 cents for a total sale consideration of Rs.3,76,000/- on 26.02.2014.

Further, it was brought to the notice of this Court that the 1<sup>st</sup> respondent/ plaintiff also entered into an Agreement of Sale with some 3<sup>rd</sup> party for the sale of the remaining 14 cents for a total sale consideration of Rs.5,16,000/- (i.e.) at the rate of Rs.44,000/- per cent.

9.The learned counsel appearing for the 1<sup>st</sup> respondent submitted that since the original documents are not available with the 1<sup>st</sup> respondent, the prospective buyer had cancelled the Sale Agreement dated 26.02.2014. A copy of the Sale Deed dated 26.02.2014 was also produced by the learned counsel for the 1<sup>st</sup> respondent in the typed set of papers. Even if the sale consideration mentioned in the Sale Deed dated 26.02.2014 and the total sale consideration mentioned in the Sale Agreement dated 26.02.2014 are added, it will come to Rs.8,92,000/- for the entire extent of 57 cents. The learned counsel for the 1<sup>st</sup> respondent submitted that if the 1<sup>st</sup> respondent is in possession of the original documents, he would have sold the property at a higher rate.

10.Since both the learned counsels agreed that a reasonable compensation can be awarded to the 1<sup>st</sup> respondent, I am of the view that a sum of Rs.7,50,000/- can be paid by the revision petitioners to the 1<sup>st</sup> respondent as compensation for the loss of the original documents. Since

the petitioners have already deposited a sum of Rs.10,00,000/- to the credit of E.P.No.62 of 2014, the 1<sup>st</sup> respondent is permitted to withdraw a sum of Rs.7,50,000/- (Rupees seven lakhs and fifty thousand only) out of the amount deposited by the revision petitioner. The petitioners are permitted to withdraw the balance amount of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) laying to the credit of E.P.No.62 of 2014. Since the dispute between the parties is given a quietus, I am of the view that the order of arrest made against the revision petitioners in E.P.No.62 of 2014 in O.S.No.92 of 2011 can be set aside. Accordingly, the same is set aside.

11.With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No  
Internet : Yes  
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28.09.2016

To

The District Munsif Court,  
Pollachi.

**M.DURAIWAMY,J.**  
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