



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2356 of 2015 (NPD)

and

M.P(MD)No.1 of 2015

K.Anbu

.. Petitioner/Plaintiff/
Decree holder/petitioner

Vs.

1.C.Balasubramanian

2.V.Mohan

..Respondents/Defendants/
Judgment Debtors/Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 09.04.2015 passed in E.P.No.22 of 2014 in O.S.No.304 of 2010, on the file of Principal Sub-Court, Thanjavur.

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.V.Chandrasekar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 09.04.2015 passed in E.P.No.22 of 2014 in O.S.No.304 of 2010, by the Principal Sub Judge, Thanjavur.

2.The petitioner is the plaintiff in O.S.No.304 of 2010 on the file of the Additional Sub-Court, Thanjavur. She filed a suit against the respondents for specific performance of the agreement of sale, dated 18.07.2008. After contest, suit was decreed on 22.06.2011. Against the said judgment and decree, the second respondent filed A.S.No.57 of 2011 before the Principal District Court, Thanjavur. In the first appeal on 22.08.2012 a compromise was entered into between the petitioner and the second respondent herein, who was the appellant in the first appeal. As per the said memo of compromise, agreement of sale dated 18.07.2008 was cancelled and the second respondent herein was permitted to withdraw RS.7,95,000/-, deposited by the petitioner herein in O.S.No.304 of 2010. After compromise decree passed in the first



appeal, the second respondent withdrew the amount deposited by the petitioner from the trial Court.

3. According to the petitioner, after withdrawing the said amount, the second respondent, who is the Power Agent of first respondent failed to execute the sale deed in favour of the petitioner. Therefore, she filed E.P.No.22 of 2014 before the Principal Sub Court, Thanjavur for executing the decree dated 22.06.2011 passed in O.S.No.304 of 2010.

4. The second respondent filed counter and submitted that the decree, dated 22.06.2011 made in O.S.No.304 of 2010 was merged in the Judgment dated 03.09.2012 made in A.S.No.57 of 2011. As per the compromise, agreement of sale, dated 18.07.2008 was cancelled and there is no direction in the decree of the appellate Court for execution of the sale deed by the respondents in favour of the petitioner. The decree of trial Court was merged with the decree of appellate Court, therefore, the trial Court decree cannot be executed and execution petition filed by the petitioner is not maintainable.

5. The learned Judge considering the petition and counter filed by the respondent and materials available on record and arguments of the counsel for the parties and judgment relied on by the counsel for the petitioner by the order, dated 09.04.2015, dismissed the E.P.No.22 of 2014, filed by the petitioner accepting the contention of the second respondent herein. Against the said order of dismissal, dated 09.04.2015, the petitioner has filed the present Civil Revision Petition.

6. The learned counsel for the petitioner submitted that the appellate Court did not set aside the decree of trial Court. Once a sum of Rs.7,95,000/- was permitted to be withdrawn by the second respondent, the second respondent is bound to execute the sale deed in favour of the petitioner. The learned Principal Sub Judge, Thanjavur has not properly appreciated the decree of first appellate Court and failed to see that the decree of Trial Court was not set aside. The learned Judge has not exercised his jurisdiction properly by not properly incorporating the judgment of the trial Court and judgment of the appellate Court.

7. The learned counsel for the petitioner relied on the judgment **2014(6) CTC 409** reported in **(M.Elumalai v. S.Rajaram)** and in paragraph 7.8. is extracted hereunder:-

"7.8. Therefore, the Clause providing for payment of sale consideration by the purchaser imposes a corresponding duty on the part of the vendor to execute the Sale Deed. Therefore, there is no necessity for a separate clause in the Compromise Decree providing for execution of Sale Deed by the seller. It is implied and the seller, who takes the purchase money can have no



escape from executing the Sale Deed. Even otherwise, Section 55 of the Transfer of Property Act expressly direct the seller to execute the Sale Deed."

8. The learned counsel for the respondents submitted that the compromise entered into the appeal filed by the second respondent and the said compromise and agreement of sale, dated 18.07.2008 between the petitioner and the second respondent and decree of trial Court merged with decree of first appellate Court and therefore, E.P., is not maintainable. Execution cannot go beyond the decree. The learned Judge has rightly dismissed the E.P. He further submitted that after receiving a sum of Rs.7,95,000/- the respondent executed three sale deeds in favour of the persons identified by the petitioner and petitioner also witnessed to the said document.

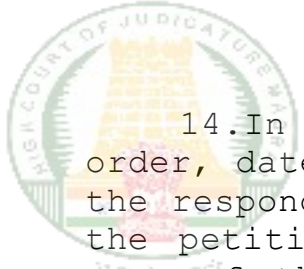
9. The learned counsel for the petitioner by way of reply submitted that in the counter filed by the respondents in the E.P., he has not taken such stand that the petitioner identified three persons in whose favour sale deeds were executed and the document produced by the respondent is disputed one and prayed for allowing the Civil Revision Petition.

10. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the entire materials on record.

11. From the memo of compromise and judgment of the first appellate Court it is seen that agreement of sale, dated 18.07.2008 was set aside and second respondent was permitted to withdraw a sum of Rs.7,95,000/- deposited by the petitioner in the trial Court. At the same time, it is clear that the appellate Court did not set aside the decree of the Trial Court granting decree of specific performance directing the respondents to receive the balance sale consideration and execute the sale deed. The second respondent has withdrawn a sum of Rs.7,95,000/-.

12. The respondents took a stand in E.P.No.22 of 2014 that there is no direction to execute sale deed in favour of petitioner. It is not his case that he executed sale deeds in favour of three persons as per direction of petitioner. The petitioner is disputing the said contention. By considering the counter affidavit and order of the lower Court, I hold that this present contention of respondents is untenable and un-sustainable.

13. In the circumstances, the contention of the learned counsel for the petitioner that the decree of specific performance granted by the Trial Court was not set aside by the first appellate Court, is not sustainable. The respondents in the circumstances are liable to execute the sale deed as directed by the Trial Court.



14. In the result, the Civil Revision Petition is allowed and order, dated 09.04.2015 made in E.P.No.22 of 2014 is set aside and the respondents are directed to execute the sale deed in favour of the petitioner within one month from the date of receipt of a copy of this order, failing which, the Office of the Execution Court is directed to execute the registered sale deed in favour of the petitioner within two months, thereafter. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

To

The Principal Sub-Court,
Thanjavur.

+1 CC to Mr.M.P.SENTHIL, Advocate, SR No.82140

C.R.P (MD) No.2356 of 2015 (NPD)
20.12.2016

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