



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P. (MD) NPD.No.703 of 2016

and

C.M.P. (MD) No.3275 of 2016

G.Vasanthi

... Petitioner/Petitioner/3rd party/
3rd party

Vs.

1.Muneeswari

2.Rajendra Pandian

... Respondents 1 and 2 /
Respondents 1 and 2 /
Petitioners / Land Lords

3.Guruvaiya

... 3rd respondent / 3rd respondent /
respondent / tenant

4.Santhanam

... 4th respondent / 4th respondent /
3rd party / 3rd party

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 29.10.2015 passed in unnumbered E.A.in S.R.No. 6366/04-09-2015 in E.P.No.52 of 2012 in R.C.O.P.No.5 of 2010 on the file of the Principal District Munsif, Srivilliputhur, Virudhunagar District.

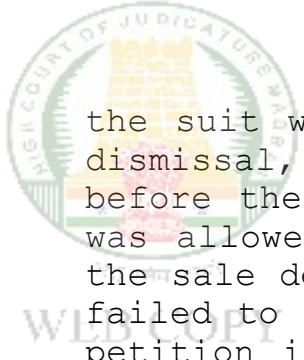
For Petitioner

: Mr.M.Mohamed Sherbudeen

ORDER

The petitioner is the third party to the petition in E.P.No.52 of 2012 in R.C.O.P.No.5 of 2010 on the file of the Principal District Munsif, Srivilliputhur, Virudhunagar District. The petition in R.C.O.P.No.5 of 2010 has been filed by the respondents 1 and 2 / landlords for vacating the premises by the 3rd respondent / tenant. The learned Principal District Munsif, Srivilliputhur, by order dated 23.01.2012 directed the 3rd respondent / tenant to vacate the premises with in a period of two months.

2.According to the petitioner, the 3rd respondent is the co owner of the suit property and is having half share in the suit property. He entered into an agreement of sale with the 4th respondent to sell his half share. However, he failed to execute the agreement of sale. Hence, the 4th respondent filed a suit in O.S.No.89 of 2012 before the Principal District Munsif, Srivilliputhur, for specific performance of agreement of sale and



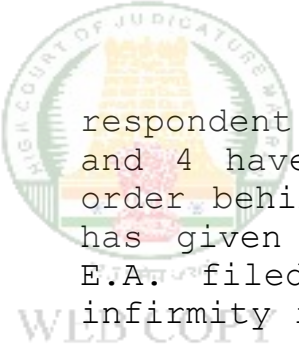
the suit was dismissed on 21.06.2012. Against the said order of dismissal, the 4th respondent filed an appeal in A.S.No.50 of 2012 before the learned Subordinate Judge, Srivilliputhur and the same was allowed on 20.12.2012 directing the 3rd respondent to execute the sale deed on or before 20.02.2013. However, the 3rd respondent failed to do so. Therefore, the 4th respondent filed an execution petition in E.P.No.79 of 2013 and on 03.03.2013, a sale deed was executed through Court in favour of the 4th respondent. Subsequently, the 4th respondent sold the said suit property to the petitioner, who is the wife of the 3rd respondent. The petitioner filed an application in E.A.SR.No.6366/04.09.2015 under Section 47 of C.P.C., claiming half share in the suit property. The learned Judge rejected the said application, without numbering the same as the application is not maintainable. Against which, the present Civil Revision Petition is filed.

3.The learned counsel for the petitioner submitted that the learned Judge failed to see that the petitioner has become the absolute owner of the undivided half share in the suit property. The respondents 1 and 2 are not the absolute owner of the suit property. The respondent's mother viz., Vellaiyammal and the 3rd respondent jointly purchased the property and therefore, the respondents 1 and 2 have only half share in the suit property. The learned Judge did not give any reason for rejecting the application filed by the petitioner without numbering. The learned Judge failed to see that the 4th respondent purchased half share in the suit property from the 3rd respondent after initiating the legal proceedings in O.S.No.89 of 2012 and A.S.No.50 of 2012 and got sale deed, which was executed through Court and the fact that the petitioner purchased half share from the 4th respondent. The learned Judge failed to see that the respondents 1 and 2 obtained an order of eviction against the 3rd respondent by suppressing the fact that already the 4th respondent has filed the suit in O.S.No.89 of 2012 and obtained sale through Court. Therefore, the said order is *void ab initio* and it is not executable.

4.Heard the learned counsel for the petitioner.

5.The respondents 1 and 2 obtained an order of eviction against the 3rd respondent. The 3rd respondent, on earlier occasion, filed a suit in O.S.No.83 of 2012 for a decree that he should not be evicted except by due process of law. In the said proceedings, the 3rd respondent admitted that he is a tenant under the respondents 1 and 2, who are land lords.

6.Agreement of sale, initiating the civil proceedings by the 4th respondent by not making the respondents 1 and 2 as party in the first appeal and also in Execution Proceedings are not binding on the respondents 1 and 2. Execution of sale deed through Court, purchasing the property from the 4th



respondent clearly show that the petitioner and the respondents 3 and 4 have colluded together and created documents and obtained order behind back of the respondents 1 and 2. The learned Judge has given cogent and valid reason for rejecting the unnumbered E.A. filed under Section 47 of C.P.C. There is no error or infirmity in the said order and no interference is necessary.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif, Srivilliputhur,
Virudhunagar District.

nbj
RL/2C/3P/SKS/RR/SARI/2/6/2016

C.R.P. (MD) No. 703 of 2016

01.04.2016