

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.1816 OF 2014
AND MP NOS.1 AND 2 OF 2014

S.P.Palanisamy

... Petitioner

Vs.

1.S.R.Velumani

2.A.K.Venkateswaramoorthy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 04.03.2014 passed in E.P.No.62 of 2012 in O.S.No.206 of 2001 on the file of the Subordinate Court, Sathyamangalam, Erode District.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.Tranquebar Dorai Vasu
for Mr.R.T.Doraisamy

ORDER

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This Civil Revision Petition is directed against the order dated 04.03.2014, passed in E.P.No.62/2012 in O.S.No.206/2001 by the Subordinate Court, Sathyamangalam, Erode District.

2. The petitioner is the judgment debtor / first defendant in the suit. The respondents filed a suit for specific performance based on an agreement dated 03.02.1999. The first respondent herein said to have purchased the property by way of a registered sale deed dated 17.01.1975 from one Maara Kurathi W/o. Late Rama Kuravan and their children. The vendor of the first defendant have direct title to settlement.

3. The suit filed by the respondents / decree holders was decreed *ex parte*. They have filed an execution petition for execution of sale and delivery of possession. In the execution petition, the petitioner / judgment debtor has filed an elaborate counter stating that the property in dispute was assigned to the predecessor in title namely, Rama Kuravan and Maara Kurathi, by the Government of Tamil Nadu. By virtue of an assignment in the year 1960 on condition that the land shall not be alienated to any person other than one who belongs to depressed class. Therefore, according to the petitioner / judgment debtor, the land shall not be conveyed to a caste Hindu and there is restriction by the Government in conveying the property. Therefore, the decree is not in legally enforceable and the petitioner has come before this Court by way

of revision to set aside the order passed in E.P.No.62 of 2012 for execution of sale deed and delivery of possession.

4. Per contra, learned counsel appearing for the respondents/ decree holders would submit that the sale deed through which the petitioner / judgment debtor has derived title, has nowhere mentioned that the land was an assigned land and conditional patta was issued by the Government. On the other hand, the sale deed which was produced before the respondents shown that the predecessor in title had derived title in through re-conveyance from their purchasers. The derivation of title in favour of the petitioner / judgment debtor originally was through a sale deed who also belongs to Scheduled Caste. Therefore, the petitioner / judgment debtor cannot set up a new case in the execution petition.

5. The attention of this Court was taken through the pleadings wherein, at the first instance, the petitioner / judgment debtor has filed a written statement and nowhere he has stated that it is a land assigned to a depressed class and there are restrictions with regard to sale. He was set *exparte* and filed an elaborate affidavit for setting aside the *exparte*

order, in which also, there is no whisper about the nature of the land. The Trial Court has set aside *exparte* decree. Against which, the respondents / decree holders filed a Civil Revision Petition in C.R.P.(PD) No.96 of 2007. This Court, after examining the reasons stated in the affidavit, by its order dated 21.06.2007, has set aside the order passed by the Trial Court allowing the petition to set aside the *exparte* order. Therefore, till 06.03.2013, the petitioner / judgment debtor has never taken a stand that it was assigned to a depressed class and there are restrictions over conveying it to a Caste Hindu. Even assuming that the land is assigned to him by the Government on conditions, it is the bounden duty of the petitioner / judgment debtor to produce material evidence to prove the same. Till the date of passing orders in the execution petition, the petitioner / judgment debtor has not produced any document in support of his case. The Execution Court has also has given a clear finding that the petitioner / judgment debtor has not produced any document to show that there was an assignment in the year 1960 and there are restrictions in the conditional patta. The Execution Court has observed that in the absence of any condition or document to show that it is an assigned land, it cannot go behind the decree and it is open to execute the same.

6. The learned counsel for the petitioner would rely on a judgment of this Court in ***V.G.P. PREM NAGAR VS. THE STATE OF TAMIL NADU [2010 (3) CTC 845]*** wherein this Court has held that the conditions restraining alienation are neither illegal nor invalid. The conditions are imposed with a view to protect the depressed classes and that, the conditions cannot be held unconstitutional. In the same lines, there is another judgment of this Court in ***K.PALANIAPPAN @ K.SUBRAMANIAM VS. THE GOVERNMENT OF TAMIL NADU AND OTHERS [1992 (2) MLJ 561]***.

7. The issue now involved is that whether the petitioner / judgment debtor has proved that the land in question is an assigned land and there are conditions attached to it restricting the conveyance of the same to persons other than depressed classes. The petitioner / judgment debtor has not produced any evidence to show that the land is assigned land and there is a bar in executing the same. Therefore, the contention of the petitioner / judgment debtor is not sustainable.

8. The learned counsel appearing for the respondents / decree holders would submit that the Execution Court cannot go behind

the decree and execute the same as it stands. It cannot go into the correctness or validity of the decree. The validity of the decree was never been in question as the petitioner / judgment debtor has not filed any appeal against the same.

9. The petitioner / judgment debtor even though has averred that the land in question is specifically assigned in favour of the depressed class, he has not produced any evidence before the Execution Court and marked any documents to prove the same. Mere statement without any substantial documentary evidence will not go to show that the assigned land is question is attached with conditions and there is prohibition from alienating the same. But on the other hand, the previous sale deed through which the petitioner / judgment debtor derived title clearly shows that his predecessors in title have got it through reconveyance of the property in the year 1975. Thereafter, it was sold to the petitioner, a Scheduled Caste person and after 40 years, the present transaction had taken place. There is no material evidence to prove the assignment patta issued in the year 1960 and there are conditions attached to it. In the absence of any proof, the issue that the suit property is a prohibited

property, the contention of the petitioner cannot be accepted. Therefore, the decree cannot be held in-executable. The contention of the petitioner / judgment debtor that the Executing Court has not considered the plea that the in-executable decree is not supported by any evidence. Therefore, this Court finds no merits in the contention of the petitioner / judgment debtor and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2017

Index : Yes/No
Internet : Yes/No
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To

The Subordinate Court
Sathyamangalam,
Erode District.

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M.GOVINDARAJ, J.

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