

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2041 of 2012

and

M.P.No.1 of 2012

Kurudampalayam Co-operative Housing
Building Society Ltd., No.K.2178,
Rep. by its Special Officer,
NGGO Colony,
Coimbatore – 641 002

.. Petitioner

Vs.

1.The Deputy Registrar (Housing),
O/o. Deputy Registrar of Co-op Societies,
Chinthamani Compound,
Mettupalayam Road, Coimbatore North,
Coimbatore 2.

2.C.Sarojini

..Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the Fair and Final Order dated
13.10.2011 made in CMA(CS)No.49 of 2010 on the file of the Principal

District Court, Coimbatore, confirming the Award dated 14.09.2009 made in Claim No.334 of 2009 on the file of the Deputy Registrar of Societies (Housing) Coimbatore.

For Petitioners : Mr.V.Sivakumar

For Respondents : Mr.T.Dhanyakumar (for R2)

No Appearance (for R1)

ORDER

The instant Civil Revision petition is filed by the Special Officer of Kurudampalayam Co-operative (Housing) Society Ltd., against the dismissal of their appeal in Cop.CMA.No.49 of 2010 dated 13.10.2011 on the file of the principal District Court, Coimbatore.

2.The case of the revision petitioner is that the revision petitioner is a co-operative housing society and the 2nd respondent herein is their member who allotted with a house plot bearing plot No.53 in a layout promoted by the petitioner's society in the name and style of "Valarmathi Co-operative Nagar". The Scheme of purchase of the plot is that sale consideration of plot has to be paid by the 2nd respondent in monthly installments. After payment of entire sale

consideration, the plot is to be transferred in the name of 2nd respondent by registering a sale deed.

3. According to the 2nd respondent herein, despite payment of entire sale consideration by her, the revision petitioner failed to transfer the above plot in her name. Hence she filed a Petition No.334 of 2009 before the 1st respondent herein under Section 90 of Tamilnadu Co-operative Societies Act seeking for a direction to the revision petitioner herein to register the house plot No.52 in her favour. To the said petition, the revision petitioner filed counter affidavit contending that though the petitioner was allotted with house site plot No.53 in Valarmathi Co-operative Nagar as early as in the year 1989 and despite several reminders made by the revision petitioner, the 2nd respondent failed to come forward to get the sale deed registered. Further she had no contact with the petitioner's society for so many years and therefore the above house plot was acquired by the Commissioner, Urban Land Taxes. In that regard the petitioner society has spent a sum of Rs.1,50,000/-. Even the 2nd respondent herein failed to pay her share in the above said expenses incurred by the revision petitioner. But after a lapse of 11 years, she filed the above petition under Section 90 of Tamilnadu Co-operative

Societies Act seeking for registration of the sale deed. The said application is not maintainable under law and facts.

4.The 1st respondent herein conducted an enquiry over the application of the 2nd respondent and having found that the 2nd respondent is entitled to the relief sought for in the petition, thereby directed the 2nd respondent herein to pay the expenses and Name transfer charges to the revision petitioner's society and in turn the revision petitioner was directed to execute a registered sale deed in favour of the 2nd respondent within 15 days from the date of payment of charges by the 2nd respondent, by an order dated 14.09.2009.

5. Being aggrieved over the same, the Revision petitioner society filed an appeal in COP.CMA.No.42 of 2010 before the learned Principal District Court, Coimbatore under Section 152 of Tamilnadu Co-operative Societies Act. In the said appeal it was contended by the revision petitioner that the 2nd respondent's petition under Section 90 of Tamilnadu co- operative societies Act, before the 1st respondent is barred by limitation. It was further contented that the house plot No.53, allotted in favor of the 2nd respondent was cancelled as she

failed to complete the registration of sale deed within the stipulated time, wherefore the subject housing plot was also allotted in favour of some third party.

6.Per contra, the said contention was resisted by the 2nd respondent opposing that since the entire sale consideration was paid, it is the legal obligation as well as duty of the revision petitioner to execute a sale deed in her favour.

7.More so, the Revision Petitioner's housing society had not sent any communication to the 2nd respondent, intimating to complete the sale process. It is further contended that the revision petitioner nowhere stated in their Counter to the 2nd respondent's application under Section 90 of Tamilnadu Co-operative Societies Act that the house plot No.53 allotted to the 2nd respondent was cancelled and was subsequently allotted to some other third party. Hence the question of limitation does not arise.

8.The Learned Principal District Judge, after elaborate discussion over the facts and circumstances involved in the case, has dismissed the appeal filed by the revision petitioner by an order dated

13.10.2011. Challenging the same, the present CRP is being filed.

9.I heard Mr.V.Sivakumar, learned counsel for the petitioner and Mr.T.Dhanyakumar, learned counsel for the 2nd respondent and perused the entire records. There was no representation for the 1st respondent.

10.This Court has carefully perused the order of the 1strespondent herein and as well as the order passed by the Learned District Judge, both the orders disclose that the revision petitioner was allotted with plot No.53 in Valarmathi Co-operative Nagar. There is no dispute with regard to the payment of sale consideration.

11.Whereas two reasons assigned by the revision petitioner questioning the allotment as unenforceable were that the 2nd respondent had not turned up to get the sale deed executed in time and resultantly the allotment was cancelled and the plot No.53 was subsequently allotted to some third person.

12.Vis-à-vis the above contentions both the authorities below has held that the revision petitioner has not produced even a single

piece of paper to establish that the 2nd respondent was directed or at least communicated to complete the sale registration process. Further there is no whisper in the counter affidavit filed by the revision petitioner before the 1st respondent to the effect that despite due communication the 2nd respondent had not turned to get her sale executed, in actual such contention is found to be raised only in the appeal filed before the learned Principal District Judge, Coimbatore. Again it is seen that as regarding the case of the Revision petitioner claiming cancellation and re-allotment of the subject plot, the revision petitioner has not filed any document.

13.Only on consideration of the above factum the Learned Principal District Judge, Coimbatore has rightly dismissed the appeal filed by the revision petitioner and the same do not require any interference by this Court. Therefore the finding of the authorities below is right and just in all aspects and the revision petitioner has not made out any case warranting interference by this Court.

14.When such being the findings of the authorities below and that this Court exercising its revision jurisdiction, it is needless to say that that the findings of fact recorded by the first appellate court/first

appellate authority and the Original authority, the 1st respondent, the consideration or examination of the evidence by the High Court in Revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. In other words, this Court cannot exercise its Revisional Power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. The Revisional power can never be equated with the power of reconsideration of all questions of fact as a court of first appeal. Only thing to be seen by this Court is to see as to whether the order impugned before it suffers from procedural illegality or irregularity.

15. In view of the discussion above, I do not find any irregularities or infirmities in the orders of the authorities below and hence, this Civil Revision Petition is liable to be dismissed.

16. In the result, this civil revision petition is dismissed, by confirming the order passed in C.M.A.(CS)No.49 of 2010 dated 13.10.2011, on the file of the Principal District Court, Coimbatore, against the award dated 14.09.2009 made in claim No.334 of 2009, on the file of the Deputy Registrar of Societies (Housing), Coimbatore. No

costs. Consequently, connected miscellaneous petition is closed.

22.06.2017

vs

Note:Issue order copy on 13.04.2018

Index:Yes

Internet:Yes

To

1.The Principal District Court, Coimbatore.

2.The Deputy Registrar of Societies (Housing),
Coimbatore.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2041 of 2012
and
M.P.No.1 of 2012

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