



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.102 of 2017 (NPD)

&

C.M.P. (MD) No.364 of 2017

V.Sowpakkiyavathi .. Petitioner/Petitioner/1st
Respondent/1st Respondent

Vs.

K.Gnanasekaran .. Respondent/Respondent/Petitioner/Petitioner

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 16.09.2016, passed in E.A.No.30 of 2016 in E.P.No.16 of 2013 in Tr.O.P.No.1 of 2007, on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr.N.Vallinayagam

ORDER

This Civil Revision Petition has been filed against the order dated 16.09.2016, passed in E.A.No.30 of 2016 in E.P.No.16 of 2013 in Tr.O.P.No.1 of 2007, on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

2. Facts of the case:-

(i) The petitioner is the first respondent in E.P.No.16 of 2013 and Tr.O.P.No.1 of 2007. The respondent is the petitioner in both the E.P. and the Tr.O.P. The respondent filed a petition in Tr.O.P.No.1 of 2007 under Section 83 of the Transfer of Property Act, 1882 [hereinafter referred to as 'the Act'] before the District Munsif Court, Madurai Taluk and the same was allowed. The said order has been transmitted to the District Munsif-cum-Judicial Magistrate Court, Vadipatti, for execution, vide order dated 23.07.2013, made in E.A.No.34 of 2013. The respondent filed E.P.No.16 of 2013 for execution of the decree dated 28.08.2007, passed in Tr.O.P.No.1 of 2007.

(ii) The petitioner filed E.A.No.30 of 2016 under Section 47 and Order XXI Rule 97 C.P.C. to strike off the E.P. on the ground that the order passed in Tr.O.P.No.1 of 2007 is illegal, erroneous and not executable.

<https://hcservices.ecourts.gov.in/hcservices/> (iii) The respondent filed counter and opposed the said application and submitted that the petitioner has filed number of



applications in E.P. preventing the respondent from enjoying the fruits of the decree. Only to drag on the proceedings, the petitioner has come out with the present application and prayed for dismissal of the application.

(iv) The learned District Munsif-cum-Judicial Magistrate, Vadipatti, considering all the materials on record, especially, the various applications filed by the petitioner, being dismissed on merits and the various judgments relied on by the learned counsel for the petitioner, dismissed the application.

3. Against the said order of dismissal dated 16.09.2016, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner submitted that the learned District Munsif-cum-Judicial Magistrate has no power to order delivery of possession under Section 83 of the Act and he has power only to direct the Mortgagor to deposit the amounts. The learned District Munsif-cum-Judicial Magistrate is not correct in dismissing the application filed by the petitioner on the ground that earlier applications filed by her, were dismissed. The learned District Munsif-cum-Judicial Magistrate has no power under Section 83 of the Act to order delivery of possession and the said order is illegal one.

5. I have heard the learned counsel for the petitioner and perused the materials available on record.

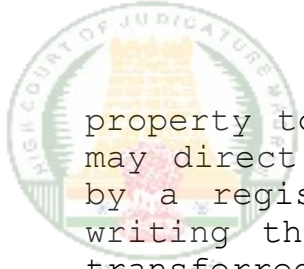
6. The contention of the learned counsel for the petitioner is that the Court has no power to order delivery of possession on the application filed under Section 83 of the Act and Court has power only to direct the Mortgagor to deposit the mortgaged amount. The said contention is contrary to Section 83 of the Act.

7. In this connection, it is useful to refer Section 83 of the Transfer of Property Act, 1882, which reads as follows:-

"83. Power to deposit in Court money due on mortgage.- At any time after the principal money [payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.- The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed [and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed [and all such other documents] so deposited shall be delivered to the mortgagor or such other person as aforesaid.

[Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged



property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

8. A reading of Section 83 of the Act clearly shows that the Court has power not only to direct the Mortgagor to deposit the amount due under mortgage and also has power to order delivery of possession before the amount deposited is permitted to be withdrawn by the Mortgagee. The Court has also power to direct the Mortgagee to deposit all the documents relating to the mortgaged document, if he accepts the amounts, so deposited. The learned District Munsif-cum-Judicial Magistrate has considered this aspect and the judgments relied on by the learned counsel for the petitioner and has held that Execution Court cannot decide whether a decree passed is null and void. It is also pertinent to note that the petitioner herein has filed an application to condone the delay of 2309 days in filing petition to set aside the *ex parte* order, passed in Tr.O.P.No.1 of 2007. The said application was dismissed on merits. The petitioner did not proceed with further. In the circumstances, there is no irregularity or illegality in the order dated 16.09.2016, passed in E.A.No.30 of 2016 in E.P.No.16 of 2013 in Tr.O.P.No.1 of 2007, by the learned District Munsif-cum-Judicial Magistrate, Vadipatti.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The District Munsif-cum Judicial Magistrate,
Vadipatti.

Copy to:

The Section Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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MAS/MR-VB:02.02.2017:3P/3C

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