



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2017
(Reserved on 27.06.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.1160 of 2017

and

CMP (MD) No.5370 of 2017

Sobhana Bai

... Petitioner

vs.

1)Jebamani

2)Lalitha

3)Regi Kumar

4)Ajitha Kumari

5)Jeyachandra Kumar

... Respondents

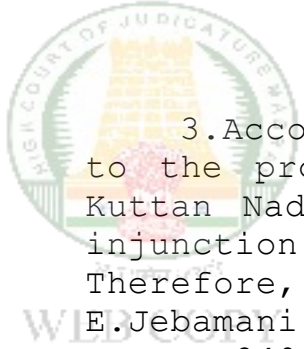
Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Sub Court, Kuzhithurai in I.A.No.12 of 2015 in A.S.No.9 of 2015 dated 14.10.2015.

For Petitioner : Mr.L.Shaji Chellan

ORDER

The revision petitioner herein is a third party to the suit proceedings. According to her plea, she had purchased the suit property and other property from one Kuttan Nadar on 15.11.2005. While so, one Jebamani S/o. Esravel Nadar as owner of the suit property has agreed to sell the property to another Jebamani S/o.Neelakantan Nadar and suit for specific performance filed to enforce the said agreement. In the said suit, the defendant has contested regarding the very execution of the sale deed and his title over the property. However, the suit was decreed in favour of the plaintiff after considering the merits of the case. The decree holder has filed E.P.No.22/2003 for execution of sale deed as per the decree and E.A.No.249/2004 for delivery of possession.

2.In the said application to deliver the possession, the present revision petitioner has preferred a claim petition E.A.No.83/2008 under Order 21 Rule 97 of CPC to record her objection and dismiss the application for delivery.



3. According to the revision petitioner, she is a third party to the proceedings. 'A' schedule property originally owned by Kuttan Nadar. In O.S.No.301/1992, Kuttan Nadar has obtained an injunction decree against the defendant E.Jebamani on 04.02.2002. Therefore, the suit O.S.No.36/1996 between N.Jebamani and E.Jebamani for specific performance is a collusive suit and E.A.No.249/2004 seeking delivery of the suit schedule property is not maintainable. The property is owned by Kuttan Nadar and not by E.Jebamani. The revision petitioner having purchased the property on 15.11.2005 from Kuttan Nadar, her claim should be recorded and execution of decree should be stayed.

4. This petition was contested by the respondents herein, stating that earlier obstruction petition E.A.No.267/2004 was dismissed and delivery was ordered on 28.01.2008 and thereafter another E.A.No.32/2008 to stay the execution of the order under Order 21 Rule 29 has been filed. Since the execution already ordered and only delivery has to be effected, the petition to stay the execution is not maintainable in law and facts.

5. The Trial Court after considering the evidence and the records and after appreciating the exhibits marked by both sides through their respective witnesses has dismissed E.A.No.83/2008 filed by the revision petitioner herein. It is specifically held by the Court below that Kuttan Nadar had no right in the suit property and therefore, the alleged purchase from Kuttan Nadar by the revision petitioner through the sale deed dated 15.11.2005 after the Kuttan Nadar entered into a compromise in O.S.No.301/1992 as early as 04.02.2004 is non est in law.

6. Against the dismissal of E.A.No.83/2008, this revision petitioner has filed first appeal in A.S.No.9/2015 and it is pending on the file of the Sub Court, Kuzhithurai. Before the appellate Court, this revision petitioner has filed interlocutory application in her appeal wherein, she has sought for stay of all further proceedings in E.P.No.22/2003 in O.S.No.36/1996 pending disposal of the appeal.

7. The appellate Court after perusing the records has held that against the order passed in E.A.No.83/2008, this revision petitioner has already filed a revision before the High Court in CRP.2727/2014 and simultaneously has taken out an appeal pending in A.S.No.9/2015. The previous proceedings between Kuttan Nadar and the defendants ended against Kuttan Nadar and after the compromise decree passed in O.S.No.310/1992 on 04.02.2004, Kuttan Nadar has no right to sell the property whatsoever. When the vendor himself has no right or title over the property, the revision petitioner herein as an obstructor has no right to stay EP. Therefore, the appellate Court has dismissed the application to stay EP.



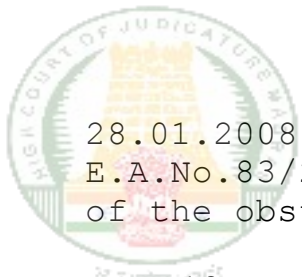
8.While dismissing the interlocutory application, the appellate Court has also pointed out that even if the delivery of the property is effected in favour of the decree holder, if the revision petitioner succeeds in the appeal, she would exercise the right of re-delivery of the property under Section 144 of CPC. It is observed by the appellate Court that the revision petitioner is only an obstructor who admittedly purchased the property from the person who has lost his title over the property and just for pendency of the appeal, the execution of the decree need not be stayed.

9.Aggrieved by the said order, the present revision petition is filed. In the revision petition, it is contended that when appeal against the execution order is under challenge, delivery of possession to the decree holder will gravely prejudice the revision petitioner. It is also contended that whether the property purchased by the petitioner from Kuttan Nadar falls in S.Nos.2813/A1 or Old S.No.2813/1 is a moot question to be decided by the appellate Court and if it is decided in favour of the revision petitioner, the execution petition has to be dismissed as non executable. Therefore, to avoid hardship to the revision petitioner, delivery of possession ought to have been stayed.

10.Heard the counsel for the petitioner who strenuously submitted that if stay of delivery is not granted, the appeal itself will become infructuous and highly prejudice the petitioner.

11.In the normal course of event, the above submission of the revision petitioner is acceptable. But, here in this case, the facts culled out from the records indicate that the decree holder who has pursued the suit since 1996 for specific performance against one E.Jebamani is now facing hurdle and obstruction from the revision petitioner who claims right through one Kuttan Nadar from whom she has allegedly purchased the suit property and other property on 15.11.2005. In the written statement itself, the defendant has mentioned about the litigation between him and Kuttan Nadar.

12.It is also borne by records that the suit filed by Kuttan Nadar in O.S.No.301/1992 ended in compromise and thereafter, this revision petitioner claims to have purchased the property from Kuttan Nadar on 15.11.2005. The said Kuttan Nadar has already filed an obstruction petition which came to an end on 28.01.2008. He has not disclosed about the alienation of the property in favour of the revision petitioner during that period. The revision petitioner has not filed any petition in the execution proceedings immediately after her purchase. It is only after dismissal of the obstruction petition filed by Kuttan Nadar in E.A.No.267/2004 on



28.01.2008, the revision petitioner has filed obstruction petition E.A.No.83/2008 and A.S.No.9/2015 the appeal against the dismissal of the obstruction petition.

13. In the interlocutory application, the appellate Court has examined witnesses and marked documents. In the course of testimony, the revision petitioner had admitted that when she purchased the property, she was aware of the pending litigation. Till the dismissal of his obstruction petition, Kuttan Nadar has not disclosed to the Court about the alienation in favour of the revision petitioner. Having lost his obstruction petition, now the revision petitioner claiming right through Kuttan Nadar has filed the present interlocutory application which the Trial Court has dismissed. Now before the appellate Court the revision petitioner seeks stay of the delivery pending appeal. It is thus clear, what her vendor Kuttan Nadar could not achieve, the revision petitioner is now trying to achieve through the present interlocutory application.

14. The Court below has rightly analysed the facts of the case and has dismissed the application. There is no error in the impugned order of the Court below. Hence, this Civil Revision Petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Kuzhithurai.

+1 CC to M/s.L.SHAJI CHELLAN, Advocate, SR No. 63259/17.

NBI
PSM/MR-KKR/SAR2/12.07.2017/4P/3C

Pre-Delivery order made in
CRP(NPD) (MD) No.1160 of 2017
30.06.2017