



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.151 of 2017 (NPD)

V.Sudharasanam (died)

1.Krishnakumar

..1st petitioner/2nd petitioner/
2nd defendant

2.S.Rajam

3.S.Brindha

..2nd & 3rd Petitioner/Legal heirs of
the deceased

Vs.

Dhobidoss

..Respondent/ Respondent/ Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 14.03.2016 in unfiled E.P.No of 2016 in O.S.No.48 of 2012 on the file of the learned III Additional District Judge and Sessions Judge, Thanjavur @ Pattukkottai by allowing this Civil Revision Petition.

For Petitioners : Mr. K.Baalasundharam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 14.03.2016 in unfiled E.P.No of 2016 in O.S.No.48 of 2012 on the file of the learned III Additional District Judge and Sessions Judge, Thanjavur @ Pattukkottai.

2.The petitioners are the legal heirs of first defendant and first petitioner is the second defendant in the suit. The respondent is the plaintiff. The respondent filed suit in O.S.No.48 of 2012 before the III Additional District and Sessions Court, Thanjavur @ Pudukkottai, for specific performance of oral agreement of sale or in alternative to return the entire advance amount of Rs.18,00,000/-. The petitioners filed written statement.

<https://hcservices.ecourts.gov.in/hcservices/> The said suit was dismissed by the judgment and decree dated 23.06.2015. In the said judgment and decree, it has been stated



that as and when the respondent hand over the first item of the suit property to the first defendant, the first defendant must pay Rs.1,50,000/- without interest, which was admitted by both parties. After passing decree, first defendant died. The petitioners are the legal heirs of the first defendant. The petitioners filed Execution Petition for recovery of possession of the property.

3. According to the petitioners, the petitioners herein deposited a sum of Rs.1,50,000/- and therefore, they are entitled to possession of the property as per decree and filed execution petition. The learned judge returned the execution petition raising quarries of maintainability. The petitioners re-presented the said E.P. The learned Judge rejected the E.P., by the order, dated 14.03.2016 after hearing the submission of the learned counsel for the petitioner. Against the said order of rejection, the petitioners have filed the present Civil Revision Petition.

4. The learned counsel for the petitioners submitted that the learned Judge erred in holding that the petitioners are not decree holders and failed to consider the definition of decree holder as per Section 2(2) of Code of Civil Procedure. The suit filed by the respondent against the father of the petitioners was dismissed. The learned Judge failed to see that the judgment passed in favour of petitioners is also decree in favour of the petitioners and the learned judge erroneously held that petitioners are not decree holders. The learned Judge failed to see that after decree, petitioners are entitled to possession of the property on payment of Rs.1,50,000 and petitioners have deposited the said amount to the credit of the suit before the Sub Court, Pattukottai.

5. I have heard the learned counsel appearing for the petitioners and also perused the entire materials on record.

6. The suit filed by the respondent for specific performance of oral agreement of sale or in alternative refund of Rs.18,00,000/- paid by the respondent to the father of the petitioners 2 and 3 and first petitioner, was dismissed. From the judgment in O.S.No.48 of 2012, dated 23.06.2015 it is seen that father of the petitioners admitted that he borrowed a sum of Rs.1,50,000/- from the respondent/plaintiff and handed over first item of the suit property to the respondent/plaintiff to be enjoyed by him in lieu of payment of interest for the amount borrowed. In view of the said admission, the learned Judge passed decree that in the event of respondent handing over possession to the father of the petitioners/first defendant, the first defendant must pay Rs.1,50,000/- to the respondent. A reading of the said portion of the decree is clear that as and when the respondent hands over the possession of the property to the first defendant, first defendant must pay a sum of Rs.1,50,000. The interpretation sought



to be given by the petitioners that the petitioners are entitled to recover the possession of payment of Rs.1,50,000/- is not correct. The learned Judge properly exercised his jurisdiction conferred on him, rejected the E.P., filed by the petitioners and there is no illegality or irregularity warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The III Additional District and Sessions Judge,
Thanjavur @ Pattukkottai.

Copy To:

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

+1 CC to M/s.K.BAALASUNDHARAM, Advocate, SR No. 3921

AM

PSM/CM-MSA/07.02.2017/3P/4C

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