

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 07.11.2017****CORAM:****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (MD) .No.1624 of 2017 (PD)****&****C.M.P. (MD) .No.9162 of 2017**

1.S.Krishnan

2.Sivakumar

... Petitioners/Respondents/Judgment Debtors

Vs.

S.Vijayalakshmi

... Respondent/Petitioner/Judgment Holder

Prayer: Petition is filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order, dated 11.09.2017 passed in E.P.No.37 of 2015 in R.C.O.P.No.1 of 2003 on the file of the District Munsif, Thiruvaiyaru and set aside and allow the civil revision petition.

For Petitioners

: Mr.G.Karnan

For Respondent

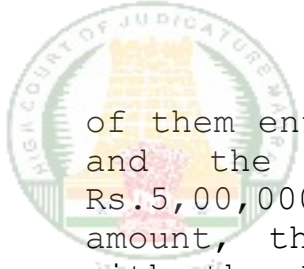
: Mr.R.Rajaraman

ORDER

The petitioners are the judgment debtors and the respondent is the decree holder. The respondent filed R.C.O.P.No.1/2003 calling upon the petitioners to hand over possession of the petition mentioned property and the same was decreed vide order dated 21.10.2003, which was confirmed on appeal by the Principal Sub Court cum Rent Control Appellate Authority, Thanjavur. Thereafter, this Court also confirmed the order in R.C.O.P.No.1 of 2003 vide order dated 20.10.2010 in C.R.P.850 of 2005.

2. While the matter stood thus, the respondent filed a petition under Order XXI Rule 35 CPC to deliver the petition mentioned property to him. The District Munsif, Thiruvaiyaru, vide order dated 11.09.2017 allowed the said petition. Aggrieved against the said order, the petitioners are before this Court.

3. The learned counsel for the petitioners would submit that after the dismissal of the civil revision petition in C.R.P.No.850 of 2005, the petitioners and the respondent entered into a compromise by which, the respondent agreed to sell the suit property to the petitioners for a sum of Rs.5,00,000/- and both



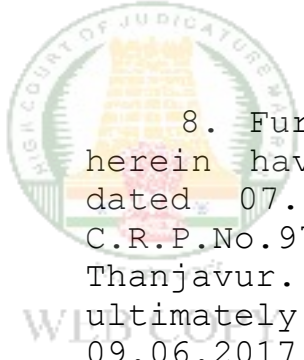
of them entered into an agreement of sale on 13.11.2010 in writing and the respondent received full sale consideration of Rs.5,00,000/- on the date of agreement itself and after paying the amount, the respondent requested the petitioner not to proceed with the RCOP and therefore, the petitioners did not take any steps to file a petition for execution of sale agreement before filing the present execution petition by the respondent.

4. It is the case of the petitioners that the respondent postponed the execution of sale only for the reason that the patta of the suit property stand in the name of the some other person. Due to increase in the market value of the property, the respondent is not willing to sell the property to the petitioners and therefore the petitioners filed a suit in O.S.No.2 of 2015 for specific performance of the contract.

5. I have carefully considered the submissions made by the learned counsel for the petitioners and the learned counsel for the respondent and also perused the materials available on record..

6. A perusal of the record would go to show that the respondent has filed the execution petition under Order XXI Rule 35 of C.P.C. to deliver the petition mention property as per the decree in R.C.O.P.No.1 of 2003 and as per the decree, the delivery of possession was directed to be made on or before 21.01.2004, which order was taken on appeal in R.C.A. No.6 of 2004 and the same was dismissed by the order of the Principal Sub Court cum Rent Control Appellate Authority on 10.03.2005. Against that order, the petitioners have filed a civil revision petition in C.R.P.No.850 of 2005 before this Court and this Court vide order dated 20.10.2010 confirmed the order of the Trial Court and dismissed the revision petition. Therefore the proceedings in R.C.O.P.No.1 of 2003 reached its finality and based on the said order, the respondent herein filed the petition in E.P.No.37 of 2015 to deliver the possession.

7. The petitioners herein objected the said petition stating that since the compromise was entered into between the petitioners and the respondent and the respondent has agreed to sell the petition mentioned property for a sum of Rs.5,00,000/- and after receiving the entire sale consideration of Rs.5,00,000/-, the respondent ought not to have filed the execution petition. Therefore, this petitioners have filed the suit in O.S.No.2 of 2015 for specific performance and contended that the respondent has not come to the Court with clean hands and therefore the Execution Petition ought to have been dismissed, but the learned Trial Judge allowed the same. Therefore, the petitioners are



8. Further, it is seen from the records that the petitioners herein have filed C.R.P.(MD).No.397 of 2017 against the order dated 07.02.2017 passed in unfilled TROP No. /2016 in C.R.P.No.9742 of 2016 on the file of the Principal District Court, Thanjavur. Though this Court initially granted interim order, ultimately the said civil revision petition was dismissed on 09.06.2017 and in that order, the Court has specifically observed at paragraph 6 as follows:-

"6. The obvious intention of the revision petitioners in filing Transfer O.P. is to protract the proceedings and defeat the decree holder in RCOP No.1/2003. If at all they entered into any agreement with the landlord and have right to proceed specific performance, it is an independent right and if they ultimately succeeded in it, they can very well get the possession of the property. Hence, this Court is not inclined to entertain this sort of revision petition.

9. In such circumstances, as the proceedings of specific performance pending in O.S.No.2 of 2015 is distinguishable from the proceedings in E.P.No.37 of 2015 in R.C.O.P.No.1 of 2003, the contention of the learned counsel for the petitioners in the present civil revision petition cannot be accepted and therefore, in my considered opinion there is no infirmity in the order passed by the learned Trial Judge and the present civil revision petition is filed only to drag on the proceedings, which is nothing but abuse of process of law. Therefore, the order of the Trial Court does not require any interference. The civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The District Munsif,
Thiruvaiyaru.

+1cc to Mr.R.Rajaraman, Advocate Sr.No.85654

JKR
VB/SV/MMS/SAR2/14/12/2017/3P/3C

**Order made in
C.R.P. (MD) .No.1624 of 2017 (PD) &
M.P. (MD) .No.9162 of 2017
07.11.2017**