



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.1766 of 2016

and

CMP(MD).No.8534 of 2016

The Kumbakonam Kannadiyar Madam,
rep. by its Executive Committee,
President Dr.R. Rethinasabapathi

: Petitioner

Vs.

1.Duraisamy(died)
2.Karpagam
3.Saravanan
4.Durga

: Respondents

(respondents 2 to 4 brought on record as
LRs of deceased R1 vide court order dated 23.12.2016
made in CMP(MD)No.12002/16 in CRP(MD)No.1766/16)

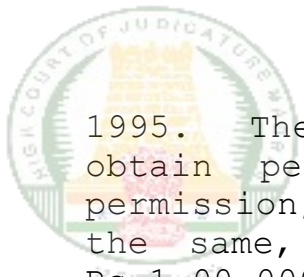
Prayer: The Civil Revision Petition is filed under Section 115 of the CPC praying to set aside the order and decretal order dated 16.11.2013 in E.A.No.88 of 2013 in E.A.No.22 of 2003 in E.A.No.1 of 2002 in O.S.No.100 of 1995 on the file of the Principal Sub Court, Kumbakonam.

For Petitioner : Mr. K. Govindarajan
For R2 to R4 : Mr. M.P.Senthil

O R D E R

This Civil Revision Petition is filed to set aside the fair and decretal order dated 16.11.2013 in E.A.No.88 of 2013 in E.A.No.1 of 2002 in O.S.No.100 of 1995 on the file of the Principal Sub Court, Kumbakonam.

2. The petitioner is the first defendant in the suit. The first respondent who is the plaintiff filed suit in O.S.No.100 of 1995, on the file of the Principal Sub Court, Kumbakonam, for the relief of specific performance of agreement in respect of the property. The said suit was decreed. The suit property is covered by scheme decree passed in O.S.No.100 of



1995. The suit was decreed with condition that petitioner must obtain permission from the scheme Court. After obtaining permission, the petitioner must inform the first respondent about the same, who has to pay the balance sale consideration of Rs.1,00,000/- and get the sale deed executed in his favour.

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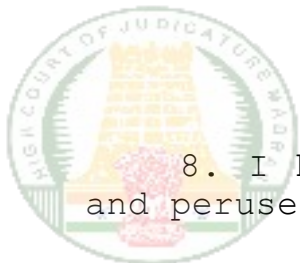
3. According to the first respondent, the petitioner did not take any steps for getting permission from the Scheme Court to sell the property in favour of the first respondent. The first respondent filed an application in E.A.No.1 of 2002 under Order 21 Rule 32(5) of CPC for granting permission to apply to the scheme Court to get necessary permission to sell the suit property as contemplated in decree. The petitioner filed counter stating that petitioner already filed an application in the Civil Court in the year 2001 itself and prayed for dismissal of the application filed by the first respondent. The learned Judge by order dated 23.03.2015 allowed the said application. The petitioner filed E.A.No.88 of 2013 for permission to file additional counter affidavit in E.A.No.1 of 2002. According to the petitioner, the property belonging to mud which is Public Trust property cannot be sold and decree is not executable. The learned Judge dismissed the application on the ground that said application was filed after 11 years of decree and executing Court cannot go beyond the decree passed in the suit.

4. Against the said order of dismissal, present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioner submitted that there is no time limit is fixed for filing additional counter affidavit. The learned Judge erred in dismissing the application only on the ground of delay. The learned Judge ought to have seen that without following the procedure, property belonging to the petitioner, mud was sought to be sold to the first respondent.

6. Pending Civil Revision Petition, the first respondent died. The respondents 2 to 4 were brought on record as LR's of the first respondent by order dated 23.03.2016 in the Civil Revision Petition.

7. The learned counsel appearing for the respondents 2 to 4, who are the legal heirs of the first respondent submitted that petitioner has not challenged the order passed in E.A.No.1 of 2002. The said order has become final. The petitioner after 11 years of decree, without filing any appeal cannot challenge the executability of the decree. The petitioner admitted that they filed an application before scheme Court for permission to file an application to sell the property to the first respondent. The petitioner has not given any reason for filing a petition for additional counter in E.A.No.1 of 2002 after 11 years of decree and prayed for dismissal of the Civil Revision Petition.



8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. The first respondent filed suit for specific performance of agreement of sale. The said suit was decreed with condition that the petitioner must obtain permission from the Scheme Court and sell the property to the first respondent. According to the first respondent, the petitioner did not obtain permission from the Scheme Court and therefore, first respondent filed E.A.No.1 of 2002 in O.S.No.100 of 1995 for permission to sell the property. The petitioner filed counter affidavit and stated that petitioner has already filed application to sell the property. In view of the averments made in the counter affidavit Execution application was allowed. After taking the stand that the petitioner filed an application to sell the property, it is not open to the petitioner now, seeking permission to file additional counter in E.A.No.1 of 2002, to the effect that suit property belonging to the Mud cannot be sold.

10. The learned Judge considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the E.A.No.88 of 2013 in E.A.No.1 of 2002 in O.S.No.100 of 1995. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

trp

To

The Principal SubOrdinate Judge,
Kumbakonam.

+1cc to Mr.M.P.Senthil, Advocate Sr.No. 7031

JAM/14.03.17 /PN/ 3p-3c

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