

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.1315 of 2018 and
C.M.P.No.6829 of 2018

Nagarathinam ... Petitioner

Vs.

S.Jaya ... Respondent/Caveator

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and final order dated 16.02.2018 made in EP.No.8 of 2017 on the file of IV Additional District and Sessions Court, Coimbatore in O.S.No.643 of 2004, on the file of Additional District and Sessions Court/Fast Track Court II, Coimbatore.

For Petitioner : Mr.P.Saravanasowmiyan
For Respondent/ : Mr.N.Manokaran
Caveator

ORDER

The civil revision petition has been filed against the order dated 16.02.2018 made in EP.No.8 of 2017 by the learned IV Additional District and Sessions Court, Coimbatore in O.S.No.643 of 2004, on the file of the learned Additional District and Sessions Court/Fast Track Court II, Coimbatore.

2 It is seen from the records that the respondent herein filed a suit in O.S.No.643 of 2004 for specific performance of an agreement. The trial Court after completion of trial and the arguments advanced on either side and after perusing the materials available on record decreed the suit in favour of the respondent/plaintiff by judgment and decree dated 26.02.2007. Aggrieved against the same the petitioner/defendant filed an appeal before this Court in A.S.No.400 of 2007, even though there is no cross appeal, it was partly allowed by judgment dated 20.12.2016. However, Special Leave Petition preferred by the petitioner/defendant before the Hon'ble Supreme Court was dismissed at the stage of admission itself by an order dated 14.07.2017. In the meantime the respondent/plaintiff initiated Execution Proceedings in E.P.No.8 of 2017, which was allowed and delivery of possession was ordered by an order dated 16.02.2018.

3 Assailing the order dated 16.02.2018 passed in E.P.No.8 of 2017, the petitioner has come forward with the present civil revision petition.

4 The learned counsel for the petitioner would submit that there is no decree for delivery of possession and in the absence of the same, the Execution Court cannot go beyond the decree by ordering delivery of possession.

5 The learned counsel appearing for the respondent/caveator would submit that the respondent filed a suit for specific performance based on the agreement which obliged the petitioner/defendant to put the respondent/plaintiff in possession of the property. The trial Court and this Court as first appellate Court have concurrently held that the plaintiff is entitled for possession of the property and in the EP preferred by the respondent/plaintiff delivery of possession was ordered. When the Hon'ble Supreme Court dismissed the Special Leave Petition preferred by the petitioner herein at the admission stage itself, he cannot take a plea that there is no decree for delivery of possession and cannot challenge the order passed by the execution Court, further the execution Court has not passed any order for delivery of possession as against the decree.

6 The learned counsel for the respondent/plaintiff would further submit that in the suit for specific performance, the relief of

delivery of possession is also couched with the same. The learned counsel in support of his contentions has placed his reliance on the judgments reported in ***AIR (1983) Supreme Court 818 (Babu Lal vs. M/s.Hazai Lal Kishori Lal and others)*** and ***2015 8 Supreme Court Cases 219 (Excel Dealcomm Private Limited vs. Asset reconstitution Company (India) Limited and others.***

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 A perusal of the records reveal that even though the respondent sought the relief of possession in the suit for specific performance, the trial Court has not specifically granted the same. As against the judgment and decree, the petitioner filed an appeal, whereas the respondent neither filed any appeal or cross appeal, in the absence of filing of any such appeal or cross appeal, the appellate Court allowed the appeal filed by the petitioner in part. The main contention of the petitioner/defendant is that neither the trial Court nor the appellate Court passed a decree for delivery of possession. Hence the EP court is barred from traveling beyond the decree granted by ordering delivery of possession.

9 The operative portion of the order of this Court in A.S.No.400 of 2007 is extracted hereunder :-

"25. In view of the forgoing discussion, the appeals is partly allowed and the judgment and decree of the Trial Court will stand modified as follows: The plaintiff will be entitled to a decree for specific performance of the agreement dated 16.07.1997. The plaintiff shall pay a further sum of Rs.5,00,000/- (Rupees Five lakhs only) to the defendant as additional consideration taking note of the escalation in prices of the property during pendency of the proceedings. In other aspects the judgment and decree of the Trial Court are confirmed."

10 The decision of the Hon'ble Apex Court (cited supra) referred to by the learned counsel for the respondent is not applicable to the facts of the present case on hand. A careful reading of the order passed by the trial Court as well as by this Court and the stand taken by the petitioners in the SLP, the petitioner has taken a specific ground that the relief of possession was not granted by the trial Court, but the SLP was dismissed by the Hon'ble Supreme Court. Though,

the petitioner has challenged the judgment and decree passed by this Court in AS.No.400 of 2007, since the Hon'ble Supreme Court declined to entertain the SLP and dismissed the same in the admission stage itself. The judgment and decree passed by this Court in AS.No.400 of 2007 attains finality. Therefore, this Court is of the view that there is no reason to interfere with the order passed by the EP Court dated 16.02.2018 in EP.No.8 of 2017 in OS.No.643 of 2004 and the revision petitioner has not made out any valid ground to interfere with the order of the trial Court.

11 In the result, the civil revision petition stands dismissed. Consequently connected miscellaneous petition is closed. No costs.

06.06.2018

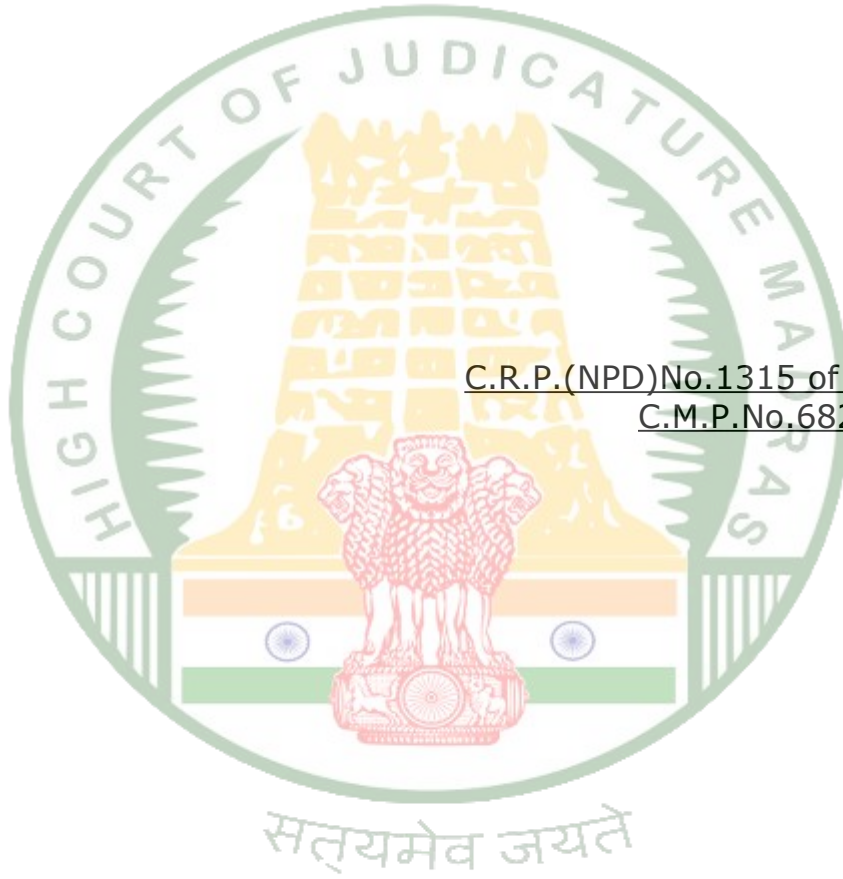
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To

1. The IV Additional District and Sessions Court,
Coimbatore.
2. The Additional District and
Sessions Court/Fast Track Court II,
Coimbatore.

P.VELMURUGAN, J.,

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