

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.2211 of 2013
and
M.P.No.1 of 2013

Salammal

...

Petitioner

Vs.

1.K.Arumugam

2.Srinivasan

...

Respondents

Prayer :- The Civil Revision Petition has been filed under Section 115 of CPC against the order dated 06.04.2013 passed in R.E.A.No.34 of 2013 in R.E.A.No.4 of 2013 in R.E.P.No.21 of 2010 in O.S.No.73 of 2009 on the file of the Subordinate Court, Harur.

For Petitioner : Mr.R.Prasadh

For Respondent : Mr.P.Valliappan
No.1

ORDER

The instant revision has been filed challenging the order dated 06.04.2013 passed in R.E.A.No.34 of 2013 in R.E.A.No.4 of 2013 in R.E.P.No.21 of 2010 in O.S.No.73 of 2009 on the file of the Subordinate Court, Harur.

2.The petitioner claims that she is the absolute owner of the suit schedule property in O.S.No.73 of 2009 on the file of the Subordinate Judge, Dharmapuri and that she had given a power of attorney in favour of the judgment debtor, who is the second respondent in this revision and subsequently, even prior to the filing of the suit by the first respondent in O.S.No.73 of 2009, she had cancelled the said power of attorney and therefore, the suit ought not to have been decreed in favour of the first respondent in O.S.No.73 of 2009.

3.REP No.21 of 2010 was filed by the first respondent to execute the decree dated 18.12.2009 passed in his favour against the second respondent. The decree was for specific performance of an agreement of sale entered into between the first respondent and the second respondent. The petitioner, who claims to be the absolute owner of the suit schedule property, filed REA No. 34 of 2013 in REA No. 4 of 2013 in REP No.21 of 2010 in O.S.No.73 of 2009 seeking stay of Execution of the decree.

4.A counter was also filed by the first respondent, who is the decree holder, in REA No.34 of 2013 filed by the petitioner.

5.The Executing Court, by its order dated 06.04.2013, dismissed REA No.34 of 2013 filed by the petitioner on the ground that the sale deed has already been executed by the Court in favour of the first respondent and possession has also been delivered to him through a Court bailiff on 12.03.2013. Aggrieved by the dismissal of REA No.34 of 2013, the instant revision has been filed by the petitioner.

6.Heard Mr.R.Prasadh, learned counsel appearing for the petitioner and Mr.P.Valliappan, learned counsel appearing for the first respondent. Despite service of notice on the second respondent and his name having been printed in the cause list, there is no representation on his side.

7.This Court has perused and examined the impugned order. As seen from the impugned order, the sale deed has been executed by the executing Court in favour of the first respondent and possession has also been delivered to the first respondent by the Court bailiff on 12.03.2013.

8.Further, it is the admitted case of the petitioner that an application to implead herself as a party to the suit O.S.No.73 of 2009 filed by the first respondent was also filed but not numbered and returned by the Registry and no further steps were taken against the return of the impleading application.

9.As seen from the impugned order, it is also made clear that the petitioner has also filed a separate suit O.S.No.36 of 2012 against the respondents for a declaration to declare that the suit schedule property in O.S.No.73 of 2009 is the absolute property of the petitioner. Only after recording these observations, the Executing Court by the impugned order has dismissed REA No.34 of 2013 filed by the petitioner. This Court is in agreement with the findings given by the Executing Court in the impugned order and therefore, does not find any infirmity in the same.

In the result, there is no merit in the instant revision petition. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
sms

19.12.2018

To

The Subordinate Court, Harur.

WEB COPY

ABDUL QUDDHOSE,J.

sms



C.R.P.(NPD).No.2211 of 2013
and
M.P.No.1 of 2013

WEB COPY

19.12.2018