

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2018

Pronounced on : 13.06.2019

CORAM

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

CRP.(NPD).No.4072 of 2017

and

C.M.P.No.19109 of 2017

Society of Daughters of Mary
Immaculate and Collaborators,
Rep. By Sister Jehani,
Amala Bhavan, No.17/X, Rudra Road,
St. Thomas Mount,
Chennai-600 016.

..Petitioner

versus

1. A. Kumar

2. Mena Desigan

.. Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in E.A.No.155 of 2017 in E.A.No.174 of 2016 in E.P.No.12 of 2012 in O.S.No.255 of 1992 by the learned Principal District Munsif, Alandur, vide order dated 03.10.2017.

For Petitioner : Mr. Adinaraya Rao

For Respondents : Mr. B.Vijay - No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order passed in E.A.No.155 of 2017 in E.A.No.174 of 2016 in E.P.No.12 of 2012 in O.S.No.255 of 1992 by the learned Principal District Munsif, Alandur, dated 03.10.2017.

2. It is seen that the first respondent entered into sale agreement with the second respondent on 23.03.1992. Since the second respondent was not a party to the contract. The first respondent filed a suit in O.S.No.255 of 1992 before the learned Subordinate Judge, Poonamallee. Since the second respondent did not give any response to the suit, therefore, the Court has passed an exparte decree on 02.07.1992. Based on the exparte decree obtained by the first respondent, he filed an Execution Petition in E.P.No.75 of 1996, directing the second respondent to execute a sale deed, failing which the Court shall execute the sale deed on behalf of the second respondent. Since she did not execute the sale deed, therefore, the Subordinate Court itself executed a sale deed on behalf of the second respondent dated 26.04.2000. Therefore, the said Execution Petition was closed on 28.03.2001. Subsequently, the first respondent filed an

Execution Petition in E.P.No.12 of 2012 for taking delivery of the possession mentioned in the sale deed. During the pendency of the said Execution Petition, the revision petitioner/third party/obstructor filed a petition in E.A.No.174 of 2016, for obstructing the delivery of the possession. During the pendency of the said Execution Application, the revision petitioner herein filed an application in E.A. No.155 of 2017 to issue Subpoena to 1. The Tahsildar, Alandur Taluk, 2. The Village Administrative Officer, St. Thomas Mount Village and 3. The Executive Officer, Pallavaram Cantonment, directing them to produce the revenue records and other records pertaining to survey No.1479, St. Thomas Mount Village, Alandur Taluk, Kancheepuram District, presently bearing Door No.2/17X, 2/17X1 and 2/17X2, Amala Bhavan, Rudra Road, St. Thomas Mount, Chennai-16 before the Principal District Munsif, Alandur. The learned Principal District Munsif, Alandur, after giving an opportunity to both the parties, dismissed the said application on the ground that the petitioner has not shown any sufficient cause to allow the petition.

3. Challenging the above said order dated 03.10.2017 passed by the learned District Munsif, Alandur, the petitioner has filed the present revision before this Court.

4. The learned counsel for the revision petitioner would submit that the first respondent obtained an ex parte decree in the suit in O.S.No.255 of 1992 for specific performance as against the second respondent by playing fraud for a property which never belonged to the second respondent and he has also obtained a sale deed through the learned Subordinate Court, Poonamallee, stealthily based on the ex parte decree obtained fraudulently. Actually the property situated at S.No.1479 bearing Door No.2/17X, 2/17X1 and 2/17X2, Rudra Road, St. Thomas Mount, Chennai, belonged to the Government and was part of land leased to Captain Jayapaul, who was also running a school and he sold his lease hold rights to the petitioner. The first respondent is trying to take delivery of the possession, claiming that Mrs.Meena Desigan/second respondent was the owner. The property now proposed to be taken delivery is situated at S.No.1479, St. Thomas Mount Cantonment, bearing Door No.2/17X, 2/17X1 and 2/17X2, Rudra Road, St. Thomas Mount, Chennai-16. The above said properties are also assessed for tax in the name of the petitioner and they are in absolute possession and enjoyment of the petitioner.

5. In the adangal and revenue records also only the name of

the petitioner is only mentioned. If the above said persons viz., the Tahsildar, the Executive Officer and the Village Administrative Officer have summoned and produced the documents, it will reveal that the properties were not covered either under the sale deed or the agreement entered between the first and second respondent and also executed the sale deed by the Court in favour of the first respondent. The learned District Munsif, Alandur failed to consider these aspects and the property is now in the absolute possession of the petitioner and which is not covered either under the decree of the sale deed. Therefore, the order passed by the learned District Munsif warrants interference.

6. According to the first respondent all the documents filed in support of the petitioners are totally irrelevant and inadmissible documents and based on which the execution of decree cannot be stalled and assailed. The petitioner has no right, interest and title over the schedule of property. The second respondent executed the sale agreement in favour of the first respondent even prior to the sale deed obtained by the petitioner. Since the second respondent has not executed the sale deed, the first respondent filed a suit in O.S.No.255 of 1992 and obtained a decree and even after passing of decree the

second respondent has not executed a sale deed. He has filed an Execution Petition in E.P.No.75 of 1996 and got a registered sale deed dated 26.04.2000 in the said Execution Petition through the Subordinate Judge, Poonamallee. Therefore, after execution of sale deed, the said E.P.No.75 of 1996 was closed on 28.03.2001. Thereafter, in continuation and consequential in nature for giving effect to the sale deed executed by the Court. Hence, he filed the execution petition in E.P.No.12 of 2012 for taking delivery of the said property, in which the present petition has been filed. The revision petitioner is the third party and he is not party to the suit and he has no right in the suit property and since the application has been filed by the revision petitioner/third party/obstructor in E.A.No.174 of 2016, in which he has filed an application in E.A.No.155 of 2017 to issue Subpoena to the the Tahsildar, Alandur Taluk, the Village Administrative Officer, St. Thomas Mount and the Executive Officer, St. Thomas Mount-Pallavaram Cantonment Office, which is un-warranted because the certified copies of the public documents can be obtained and there is no need to summon the public servants either to give the evidence or to produce the public documents and certified copies shall be obtained and very well be produced before the Court. The learned District Munsif rightly dismissed the petition and there is no perversity in the

order and there is no need to interfere with the order passed by the learned District Munsif.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. Admittedly, the first respondent obtained a decree in favour of him against the second respondent in O.S.No.255 of 1992 and filed an Execution Petition in E.P.No.75 of 1996 and obtained a registered sale deed in favour him and the said sale deed was executed by the Subordinate Court, Poonamallee dated 26.04.2000. The first respondent has subsequently filed an Execution Petition in E.P.No.12 of 2012 for taking delivery of the properties mentioned in the sale deed. During the pendency, the execution petition, the present petitioner/the third party has filed, an application in E.A.No.174 of 2016, in which he has subsequently filed an another application in E.A.No.155 of 2017. Though the said decree obtained by the first respondent is an exparte decree, the second respondent neither challenged the decree, nor filed any petition to set aside the exparte decree. Subsequently, when the first respondent/decreed holder filed an execution petition in E.P.No.75 of 1996 for execution of sale deed as

per the decree, the second respondent has neither challenged the decree nor filed any petition to set aside the said Execution petition and allowed the learned Subordinate Judge, Poonamallee to execute the registered sale deed dated 26.04.2000 in favour of the first respondent. Therefore, the first respondent filed the present execution petition in E.P.No.12 of 2012. Though the said decree was not challenged. Therefore, the execution Court cannot travel beyond the decree. Now the revision petitioner is only third party and he has filed the petition for obstruction for taking delivery of the property shown in the execution petition. In that application, he has filed an application in E.A.No.155 of 2017 to send a subpoena to the officials stated supra. The main contention of the revision petitioner, is that the property situated at S.No.1479 bearing Door No.2/17/X, 2/17/X1 and 2/17/X2 belongs to the Government and was part of the land was leased to Captain Jayapal and he sold the lease hold right to the petitioner. The first respondent is that the second respondent is the owner of the property. But in order to prove its case, though he has stated that revision petitioner is absolute owner of the property, they are in possession and enjoyment of the property. She can very well prove their claim through the oral and documentary evidence even without sending subpoena to the above said three Officials. Since the

documents are public documents, she can very well obtain a certified copies of the same and the same may be produced before the Court to establish their title and possession. Without doing so, in order to protract the execution petition the revision petitioner filed an application in E.A.No.155 of 2017 to send the subpoena to the above said officers which was un-warranted. As stated by the learned District Munsif, the claim of the revision petitioner can be established through the certified copies of the documents even without sending subpoena to the above said officers and production of the original documents. If the public documents are available to prove its case, the revision petitioner can always obtain a certified copy. If the respondent challenged the said genuineness of the certificate copies, then he can take steps in the manner known to law to prove the genuineness and validity of those documents.

9. Under these circumstances, in order to establish the obstruction petition, the petitioner has to file the documents which is available with them or she can produce the documents in the manner known to law by obtaining the certified copies. Therefore, when the alternative choices are available for the revision petitioner. When the learned District Munsif pointed out the relevant rules and dismissed the

petition. This Court does not find any reason to interfere with the same. The revision Court can only interfere with the order if any perversity is found in the order passed by the trial Court.

10. On reading of the entire background of the case and also the application filed by the revision petitioner, and also the nature of the documents and witnesses, which are sought for by the petitioner, the reason given by the learned District Munsif, Alandur in the dismissal order is not perverse. Therefore, this Court does not find any perversity or infirmity in the impugned order and finds there is no merit in the revision.

11. Since the suit filed in the year 1992 and the execution petition filed in the year 2012. The learned District Munsif, Alandur is directed to dispose the Execution Application in E.A. No.174 of 2016 in E.P.No.12 of 2012 in O.S.No.255 of 1992 in accordance with law, within a period of three months from the date of receipt of a copy of this order and also directed to dispose the Execution Petition in E.P.No.12 of 2012 in O.S.No.255 of 1992 Within a period of six months from the date of receipt of a copy of this order.

12. With the above observation, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is also closed.

13.06.2019

Index:Yes/No

Speaking order/Non speaking order

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To

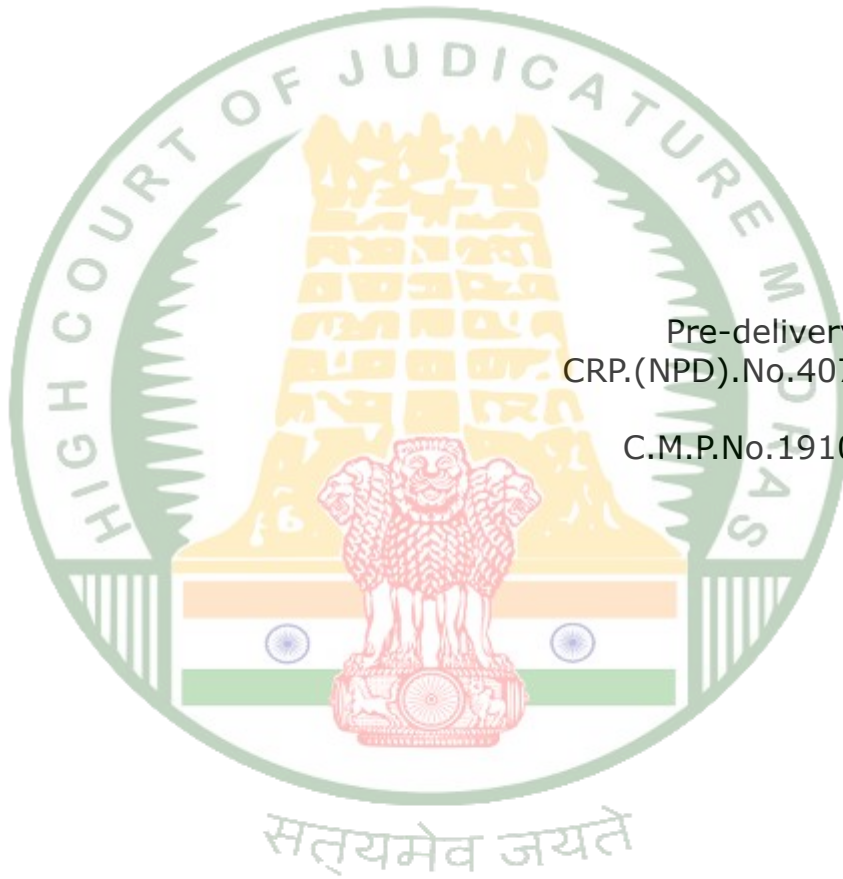
The Principal District Munsif, Alandur.



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P.VELMURUGAN, J.,

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Pre-delivery Order in
CRP.(NPD).No.4072 of 2017
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