

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1620 of 2018

and

C.M.P.No.12874 of 2018

Shirly Paul,
Represented by her Power Agent
and husband Mr.Jenkins Bright ...Appellant/Petitioner

Vs.

S.K.Sundararajan ...Respondent

Prayer:

Appeal filed under Order 43 Rule 1(ja) of the Code of Civil Procedure to set aside the order passed in R.E.A.No.12 of 2017 in R.E.P.No.58 of 2014 in O.S.No.38 of 2011, on the file of the Principal District Court, Namakkal, dated 08.03.2018.

For Appellant : Mr.C.Jagadish

For Respondent : Mr.P.Valliappan

J U D G M E N T

This Civil Miscellaneous Appeal arises out of an order, by which, the Execution Court has executed the sale deed in favour of the respondent pursuant to a decree for specific performance passed on the trial side. In the Execution Appeal, the respondent/decreed holder has been set exparte and the Court proceeded to dismiss this Application as well, on the ground that the sale deed has already been executed by the Court.

2. Heard both sides.

3. The order of the Execution Court literally begs the question, since what is sought to be set aside by the appellant is the very order, by which, the sale deed was sought to be set aside, for which, the fact that the sale deed has been executed pursuant to the order impugned in the application, cannot be a ground for dismissing the very application.

4. This Court, therefore, finds merit in this Civil Miscellaneous Appeal and the same is allowed. The order impugned is set aside and the matter is remitted back to the Execution Court for fresh consideration.

5. The respondent is at liberty to file such application to participate in the proceedings, however, within the province of law. The Execution Court is required to dispose of the matter by 31.12.2018 and to report compliance of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsg/sd

To

The Principal District Judge, Namakkal.

Copy to: 1. The Section Officer, VR Section,
High Court, Madras.
2. The Section Officer, Judicial Department,
High Court, Madras.

C.M.A.No.1620 of 2018
and

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