



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.1900 of 2017

Manoharan ... Petitioner/Petitioner/Petitioner/Plaintiff

-vs-

Solomon ... Respondent/Respondent/Respondent/Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order in E.A.No.230 of 2014 in E.P.No.30 of 2012 in O.S.No.138 of 2007 dated 27.01.2017 on the file of the Principal District Munsif's Court at Kuzhithurai and to allow E.A.No.230 of 2014.

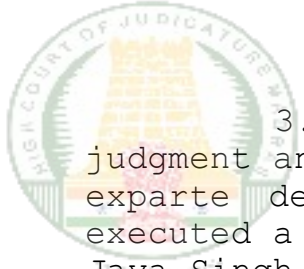
For Petitioner : Mr.M.Punitha Deva Kumar

For Respondent : Mr.G.Aravinthan

O R D E R

The Revision Petitioner is the plaintiff in the suit in O.S.No.138 of 2007 on the file of the Principal District Munsif's Court at Kuzhithurai and the suit was filed by the plaintiff for specific performance of agreement for sale, etc. The said suit was decreed in favour of the plaintiff and the Trial Court also executed a sale deed in favour of the plaintiff on 23.12.2013 as per the order in the execution proceedings. However, the subsequent E.A.No.230 of 2014 filed by the plaintiff for delivery of the property came to be dismissed, on the ground that the E.A.No.60 of 2015 filed by the subsequent purchaser was allowed. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioner / plaintiff that on 25.09.2015, the defendant executed an agreement of sale in favour of the plaintiff, with a condition to execute a sale deed within 1½ year from the date of agreement and received Rs.40,000/- as advance from him at that time. Though the plaintiff was ready and willing to pay the balance amount of Rs.16,000/- so as to enable the defendant to execute the sale deed in his favour, the defendant did not come forward to do so, which forced the plaintiff to file a suit in O.S.No.138 of 2007 before the Civil Court, in which he had obtained a favourable exparte order on 01.12.2009. It is the further case of the revision petitioner / plaintiff that in consequence of the said decree, he filed E.P.No.30 of 2012 for execution of the order, which was also allowed.



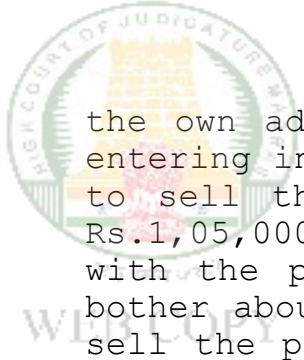
3. The revision petitioner states that against the said judgment and decree, the defendant filed a petition to set aside the *exparte* decree, which is pending. While so, the defendant had executed a sale deed in Doc.No.737 dated 05.04.2017 in favour of one Jaya Singh and his wife Prema Latha and therefore, the plaintiff had filed yet another suit in O.S.No.352 of 2007 against the subsequent purchasers, in which no order has been passed. It is further stated that after filing of E.P.No.30 of 2012, the alleged subsequent purchasers filed E.A.No.60 of 2015, seeking to adjudicate their claim in the capacity of additional Respondents 2 and 3, which was ordered by the Principal District Munsif Court, Kuzhithurai, pursuant to which, E.A.No.230 of 2014 filed by the plaintiff was dismissed. Contending that there is no mandatory provision of law warranting impleadment of the subsequent purchasers, as the plaintiff had previously no knowledge of sale in favour of them, it is prayed that the order passed by the Principal District Munsif Court is liable to be set aside.

4. Learned counsel for the defendant has stated that in the suit, the plaintiff had obtained an *exparte* order, against which, he had already filed an appeal seeking to set aside the *exparte* order. Though he had entered into an agreement of sale with the plaintiff, the plaintiff did not pay the balance sale consideration within the stipulated period as found mentioned in the agreement and therefore, he sold the property to some third parties. It is further stated that the plaintiff, without adding the third parties to the suit, had obtained an *exparte* order in his favour and according to the defendant, the subsequent purchasers are the bona fide purchasers, who had paid a valid sale consideration in respect of the property. Therefore, the defendant prayed for dismissal of the petition.

5. Heard the learned counsel on either side and also perused the material documents available on record.

6. A circumspection of the fact would reveal that admittedly, the defendant did not succeed in the suit, as an *exparte* order was passed against him. The agreement of sale was entered into between the plaintiff and the defendant on 25.09.2005 and pursuant to the breach of agreement, the plaintiff had filed O.S.No.138 of 2007 before the District Munsif Court, Kuzhithurai for specific performance of sale. It is the claim of the plaintiff that on 17.03.2007, he sent a legal notice to the defendant for execution of the sale deed, for which, he sent a reply notice dated 10.04.2007, stating that immediately after two days of sale agreement with the plaintiff, he had executed yet another agreement for sale with one Palayan for sale consideration of Rs.1,05,000/- and later, the said agreement for sale was revoked. However, the suit schedule property was sold to the parties, who are defendants in O.S.No.191 of 2010 by way of sale deed dated 05.04.2007.

7. From the act of the defendant, it is apparent that he <https://hservices.ecm.his.gov.in/hservices/> has been liable of getting some sale consideration as advance from various purchasers, by showing the very same suit schedule property, thereby, they were repeatedly cheated, leaving them at lurch. It is



the own admission of the defendant in the reply notice that after entering into an agreement of sale with the plaintiff, he had agreed to sell the property to one Palayan for a sale consideration of Rs.1,05,000/-, which was admittedly higher than what was agreed upon with the plaintiff. Thus, it is clear that the defendant did not bother about the sale agreement and his promise, but only wanted to sell the property for higher price. The defendant had executed the agreement for sale to the plaintiff for sale consideration of Rs.56,000/- after receipt of nearly 75% of the sale consideration, viz., Rs.40,000/- and the balance of only Rs.16,000/- was left out to be paid and according to the plaintiff/petitioner, he was always ready and willing to pay such a meagre amount, inspite of which, the defendant did not come forward to execute the sale deed, which shows his clear intention.

8. The Trial Court, having passed an order in E.P.No.30 of 2012 and executed an original sale deed in favour of the plaintiff, has disallowed the Execution Application for want of adjudication by the subsequent purchasers. It is pertinent to mention here that since the plaintiff had filed a separate suit against the subsequent purchasers, the said sale came to light and it is not known as to whether the defendant had sold or entered into agreement of sale with any other third parties. Of course, the defendant had filed a petition for setting aside the exparte order and it is not revealed whether the petition was filed in time, was it numbered or any notice ordered and as such, it will be detrimental to the plaintiff, if he is prevented from enjoying the fruits of decree. Therefore, this Court is of the view that the order dated 27.01.2017 passed in E.A.No.230 of 2014 in E.P.No.30 of 2012 in O.S.No.138 of 2007 by the learned Principal District Munsif, Kuzhithurai needs intervention by this Court and is liable to be set aside.

9. In the result,

(a) the Civil Revision Petition is allowed, thereby setting aside the order dated 27.01.2017 passed in E.A.No.230 of 2014 in E.P.No.30 of 2012 in O.S.No.138 of 2007 by the learned Principal District Munsif, Kuzhithurai; (b) it is made clear that whatever observed above is only for the purpose of deciding this petition alone and the same will have no bearing on the appeal, if any filed by the defendant and the order be passed thereon on merits and in accordance with law, being uninfluenced by anything stated hereinabove.

No Costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar



To:

1. The Principal District Munsif,
Kuzhithurai.

2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.M.PUNITHA DEVAKUMAR, Advocate in SR.No.68384

+1 CC to Mr.G.ARAVINTHAN, Advocate in SR.No.68172

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RJ/SV/SAR-3/20/07/2018 - 4P/6C

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