



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1286 of 2018

and

C.M.P. (MD) No.5437 of 2018

T.G.Navaneetha Krishnan (Died)

Renuka (Died)

1. N.Sureshkumar

2. Sudarsan

3. Balaji

... Petitioner/Respondents/Defendants

-vs-

T.G.R.Vasanthakumar ... Respondent/Petitioner/Plaintiff

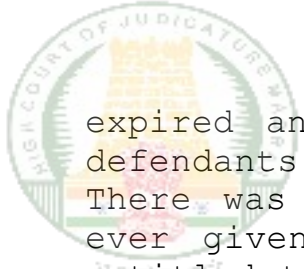
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the impugned order dated 04.06.2018 passed in E.P.No.34 of 2008 in O.S.No.129 of 2004 on the file of the I Additional District Judge, Tiruchirappalli.

For Petitioners : Mr.R.Narayanan

For Respondent : Mr.R.Bharathkumar

ORDER

The revision petitioner are the defendants in O.S.No.129 of 2004 (renumbered from O.S.No.363 of 2001) on the file of the I Additional District Judge, Tiruchirappalli and in the suit, the plaintiff / respondent herein sought for specific performance of sale agreement, permanent injunction, etc. declaration, permanent injunction, etc. The suit was decreed in favour of the plaintiff by passing an exparte judgment, against which the defendants have filed an appeal before this Court, which is in SR stage. Subsequently, when the execution proceedings were about to start, a third party, claiming to have rights over the property, filed a Civil Revision Petition in CRP(MD) No.588 of 2018, which was, after argument, reserved for orders and therefore, the third party filed a memo before the Trial Court for stoppage of delivery order citing the pendency of CRP. However, the Trial Court was pleased to reject the memo pursuant to non grant of any stay in the CRP. Challenging the same, the defendants / petitioners herein are before this Court.



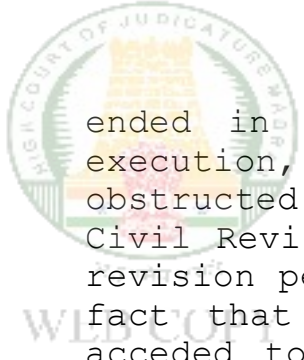
expired and the suit schedule property is in possession of the defendants and the plaintiff cannot claim right over the property. There was no sale agreement between them and no possession was ever given to the plaintiff and as such, the plaintiff is not entitled to the relief. It is the further case of the petitioners that having not proved the factum of the petitioners' intention to sell the property, the Trial Court ought not to have granted the relief of specific performance of the sale agreement based on the fabricated documents. The plaintiff has converted the contract of money transaction into the one of specific performance in order to grab the suit property.

3. The revision petitioners state that subsequent to the filing of E.P.No.34 of 2008 by the plaintiff for execution of the order, one third party had filed E.A.No.34 of 2017 to stop all execution proceedings, which was dismissed for default, against which he filed another application in E.A.No.75 of 2017 for restoration of E.A.34 of 2017 and the same was also dismissed on 22.02.2018 with costs. The revision petitioners further state that pursuant thereto, the third party petitioner filed C.R.P.(MD) No.588 of 2018 before this Court for setting aside the order passed in E.A.No.75 of 2017, which, after hearing both sides, was reserved for orders. Therefore, the revision petitioners filed a memo before the Trial Court to postpone the execution proceedings till the order being passed in the CRP, which was not considered by the Trial Court and the said act is against law and calls for interference by this Court.

4. Learned counsel for the plaintiff/respondent has contended that there is no error committed by the Trial Court in rejecting the memo filed by the petitioners herein. It is quite surprising that the Civil Revision Petition was filed by a third party, as admitted by the revision petitioners themselves, in which orders were reserved by this Court and it is not known as to how the revision petitioners seek for postponement of execution proceedings till the order passed in the CRP, that too, filed by a third party. It is further contended that in the absence of stay, there is no bar for the Trial Court to proceed further in the matter before it and therefore, the petition is liable to be dismissed.

5. Heard the learned counsel on either side and this Court also perused the material documents placed on record.

6. The revision petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India aggrieved by the rejection of memo filed by a third party. The plaintiff had filed the suit against the original defendants and their death, the sons of the defendants are before this Court, denying the sale agreement alleged to have been entered between their parents and the plaintiff. Though the suit



ended in favour of the plaintiff and went upto the level of execution, a third party, claiming rights over the property, obstructed to it by filing Execution Application and thereafter, Civil Revision Petition before this Court. It is the stand of the revision petitioners that the Trial Court, having appraised of the fact that the Civil Revision Petition awaits orders, did not acceded to their request of postponing the matter. According to the respondent / plaintiff, there is no stay in existence in the said petition and therefore, no necessity arose for the Trial Court to stall the execution proceedings.

7. This Court, after giving anxious consideration to the submissions made on either side, is of the view that there is force in the contention raised by the learned counsel for the respondent. Admittedly, a third party had filed a Civil Revision Petition before this Court, in which no stay had been granted by this Court. It is pertinent to mention here that had there been a stay before reserving the matter for orders, then there is a bar for the Trial Court to proceed further in the matter, in the absence of which, it cannot be said that irrespective of grant of stay, the Trial Court has to wait for the orders of the Higher Forum. As this Court has time and again insisted all Trial Courts to reduce the pendency level, mere filing of a petition before this Court without any stay or interim direction therein will not curtail Trial Courts to take a decision on the matter pending before it for consideration.

8. Considering the overall facts and circumstances of the case, this Court is of the view that the order of the Trial Court is perfectly valid and needs no interference by this Court.

9. In the result,

a) this civil revision petition is dismissed, confirming the order dated 04.06.2018 passed in E.P.No.34 of 2008 in O.S.No.129 of 2004 on the file of the I Additional District Judge, Tiruchirappalli.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

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Sub Assistant Registrar(CS-IV)

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2. The Record Keeper,
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+1cc to M/s.Banumathy, Advocate Sr.No.70392

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VB/MMS/SAR4/07.08.2018/4P/5C

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