



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.1830 of 2018 and

C.M.P. (MD) No.8022 of 2018

Madathiyammal ... Petitioner/Petitioner/
10th Respondent/10th Respondent/
10th Respondent/9th Plaintiff

Vs.

Pandi (Died) ... 1st Respondent/1st Respondent/
1st Petitioner/1st Petitioner/
1st Plaintiff

1. Mookkandi
2. Ganapathi
3. Subbiah ... Respondents 1 to 3/ Respondents 2 to 4/
Respondents 2 to 4/Petitioners 2 to 4/
Petitioners 2 to 4/Plaintiffs 2 to 4

4. Mariammal
5. Esakkiammal
6. Muppidathi
7. Rathinam ... Respondents 4 to 7/ Respondents 5 to 8/
3rd Party/LRs of the 1st plaintiff,
namely, Pandi

8. Vasanthi ... 8th Respondent/9th Respondent/
Petitioner/3rd Party

9. Selvaganapathy
@ Selvaganapathy Raja ... 9th Respondent/10th Respondent/
5th Respondent/Respondent/
Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 20.07.2018 passed in E.A.No.118 of 2018 in E.A.No.110 of 2011 in E.A.No.76 of 2011 in E.P.No.37 of 2010 in O.S.No.56 of 2010 on the file of the Subordinate Court, Ambasamudram.



For Petitioner: Mr.H.Arumugam
For R-8 : Mr.Prabhurajadurai

O R D E R

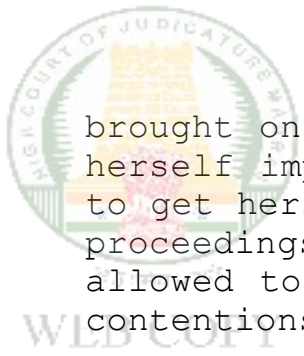
O.S.No.56 of 2010 was filed by one Pandi and three others against the ninth respondent herein Selvaganapathy @ Selvaganapathy Raja before the Subordinate Court, Ambasamudram, seeking the relief of specific performance. According to the plaintiffs, the defendant in the said suit executed a sale agreement on 12.01.2007 in their favour. The sale consideration was fixed at a sum of Rs.2,00,000/-. The defendant was said to have received a sum of Rs.1,80,000/- and the balance amount of Rs.20,000/- alone remained to be paid as per the terms of the said sale agreement.

2. The property in question is a Rice mill. Even though, the sale agreement is said to have been executed on 12.01.2007, the suit itself came to be filed only on 23.08.2010. The suit was decreed ex-parte on 23.09.2010. On the face of it, this Court entertained a doubt as it appeared to be rather collusive in nature. Be that as it may, to enforce the said decree, E.P.No.37 of 2010 came to be filed. In the said E.P., the eighth respondent herein, one Vasanthi, filed an obstruction petition in E.A.110 of 2011 under Order 21 Rule 97 of C.P.C. The said obstruction petition is yet to be disposed of.

3. It appears that for some reasons or the other, the said proceedings could not reach their logical conclusion. In the meanwhile, the first plaintiff Pandi passed away. His legal heirs, namely, wife and children were brought on record. But then, the Revision petitioner herein who is the mother of the said Pandi was not originally impleaded in the said execution proceedings. Therefore, she filed E.A.No.91 of 2018 and got herself impleaded in the obstruction petition filed by the said Vasanthi. Thereafter, she filed the present E.A.No.118 of 2018 for reopening the proceedings and for adducing further evidence. The said application was dismissed by order dated 20.07.2018. The correctness of the said order is questioned in this Civil Revision petition.

4. Heard the learned counsel appearing for the Revision petitioner and the learned counsel appearing for the eighth respondent.

5. The learned counsel appearing for the Revision petitioner contended that an obstruction application will have to be dealt with like a suit. In this case, it is not in dispute that the Revision petitioner's son was one of the decree holders. It is also not in dispute that the Revision petitioner was omitted to be



brought on record. But then, subsequently she was allowed to get herself impleaded. When once the Revision petitioner was allowed to get herself impleaded, the natural corollary should be that the proceedings are also reopened and the Revision petitioner is allowed to adduce further evidence. He also reiterated the other contentions set out in the memorandum of grounds.

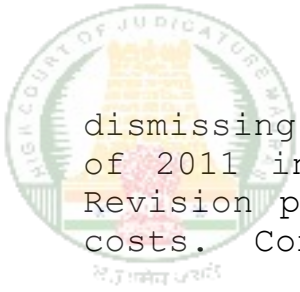
6. I am unable to agree with the contentions of the learned counsel appearing for the Revision petitioner.

7. As rightly pointed out by the learned counsel for the eighth respondent, it is seen that the eighth respondent had purchased the suit property as early as on 18.10.2007 by way of a registered sale deed from the defendant, namely, Selvaganapathy @ Selvaganapathy Raja. Without making the eighth respondent as a party, the suit came to be instituted. This Court is able to see that the vendor of the eighth respondent in order to embarrass the eighth respondent had engineered the suit in question. Otherwise, the defendant in the suit for specific performance that is the valuable property Rice mill, would not have actually allowed the suit to be decreed ex-parte. The agreement said to have been entered in favour of the original defendant is dated 12.01.2007. The suit came to be filed on 23.08.2010, after a gap of more than 3½ years. The defendant does not seem to have put up any fight. It is not difficult to reach the conclusion that the suit has been engineered only to defeat the legitimate rights of the eighth respondent herein. In any event, this matter is to be decided by the Execution Court in the obstruction petition filed by the eighth respondent in E.A.No.110 of 2011.

8. The only question to be gone into is whether the Revision petitioner herein is to be given an opportunity to defend the proceedings. The Revision petitioner's son was not the sole decree holder. There are three other decree holders. The other legal heirs of the first plaintiff Pandi, namely, the daughters, sons and grandfather have come on record. That apart, it appears that the other decree holders made a similar attempt to reopen the proceedings and the same was negatived. It also appears that the order negating the said plea was affirmed in the Revision proceedings.

9. In these circumstances, the Court below was absolutely justified in putting a full-stop to these obstructions created by the parties to O.S.No.56 of 2010. The obstruction application filed by the eighth respondent is to be taken to its logical conclusion without any further obstruction. There is no merit in this Civil Revision petition.

10. Affirming all the reasons given by the Court below for



dismissing E.A.No.118 of 2018 in E.A.No.110 of 2011 in E.A.No.76 of 2011 in E.P.No.37 of 2010 in O.S.No.56 of 2010 filed by the Revision petitioner, the Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Subordinate Judge,
Ambasamudram.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO MR.H.ARUMUGAM, ADVOCATE IN SR NO.81061
+ 1 CC TO MR.PRABHURAJADURAI , ADVOCATE IN SR NO.81150

PMU

BU/RSK/SAR-IV : 09.10.2018 : 4P/6C

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C.M.P. (MD) No.8022 of 2018
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