



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 22.02.2018
Pronounced on: 27.03.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P.(PD)(MD)No.1821 of 2013

S.Sikkandhar ... Petitioner/Petitioner/3rd Party
Vs.

1.Smt.V.Umayal Achi
(Rep., through her power agent Mr.S.Lakshmanan)
..1st Respondent/1st Respondent/Plaintiff/Decree Holder

2.Michel P.Chatlier
..2nd Respondent/2nd Respondent/Defendant
/Judgment Debtor

PRAYER: Petition filed under Section 115 of C.P.C, against the fair order and ex order dated 03.10.2013 made in E.A.No.28 of 2011 in E.P.No.12 of 2011 in O.S.No.40 of 2008 on the file of the VI Additional District Court, Madurai.

For Petitioner : Mr.R.Surianarayanan
For R1 : Mr.R.Vijayakumar

O R D E R

The Civil Revision Petition has been preferred against the order dated 03.10.2013 made in E.A.No.28 of 2011 in E.P.No.12 of 2011 in O.S.No.40 of 2008 on the file of the VI Additional District Court, Madurai.

2.The brief facts of the case are as follows:

2.i) The suit in O.S.No.40 of 2008 was filed for specific performance directing the defendant to execute the sale deed for Rs.30,00,000/- in favour of the plaintiff in respect of the suit property after receiving the balance sale consideration of Rs.10,00,000/- and to hand over the original title deeds and revenue records of the suit property and to hand over the possession of the suit property to the plaintiff within a time to be fixed by the court. The said suit was decreed in favour of the plaintiff. The court below has granted three months time to execute the sale deed by the defendant in favour of the plaintiff. The defendant is entitled to withdraw the balance sale consideration of Rs.10,00,000/- deposited in the court by the plaintiff.



2.ii) The plaintiff has filed an Execution Petition in E.A.No.12 of 2011 in O.S.No.40 of 2008 for execution of the sale deed. In the Execution Proceedings, the petitioner/third party has filed an Execution Application in E.A.No.28 of 2011 under Section 47 of C.P.C praying to declare that the decree passed in O.S.No.40 of 2008 as null and void and to dismiss the Execution Petition.

2.iii) The petitioner/third party has averred in the petition that the suit property belongs to the second respondent/defendant and in pursuant to the sale agreement dated 28.12.2006, a sale agreement was entered into between them. As per the said agreement, price was fixed at Rs.25 lakhs and on that day itself a sum of Rs.10 lakhs has been paid and after receiving the balance amounts, sale deed was executed on 16.07.2007. The plaintiff and the defendant colluding with each other got a decree of specific performance on the basis of an alleged sale agreement dated 20.01.2007. Therefore, the said decree is void in nature and unenforceable one. The petitioner, who is a purchaser prior to the suit, was not impleaded in the suit and therefore, prayed that the decree passed in O.S.No.40 of 2008 should be declared as null and void.

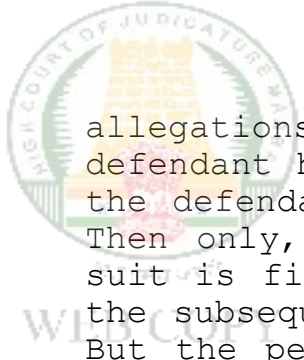
2.iv) It is the averment of the petitioner that both respondents have colluded with each other and played fraud on the court and obtained the decree, which is void. After hearing the parties and on perusing the materials the trial court has dismissed the application. Against which the petitioner is before this Court.

3. The learned counsel for the petitioner would mainly argue that the petitioner is a bonafide purchaser of the suit property and the petitioner is a title holder under Ex.P.3 and without impleading the petitioner, the first respondent got a decree and the entire reasoning of the executing court is based on misconception of facts and law. He prays for setting aside the order of the execution court.

4. The learned counsel appearing for the respondent submitted that the executing court is right in dismissing the application filed by the petitioner/third party and he prays for dismissal of this Civil Revision Petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

6. The plaintiff came to know that the defendant was negotiating the sale of the property for a higher price to third parties by suppressing the sale agreement with the plaintiff and the plaintiff made a public notice in a Tamil daily on 09.09.2007 and had issued a legal notice calling upon the defendant to execute the sale deed in her favour after receiving the balance consideration. On the other hand, the defendant had given a paper publication with false



allegations. Thereafter, mediation took place and since the defendant has failed to fulfill his words, the plaintiff approached the defendant to complete the sale and he was not ready as agreed. Then only, the suit was filed for specific performance. When the suit is filed by the plaintiff for specific performance, regarding the subsequent sale there was no mention in the written statement. But the petitioner/third party has not taken any steps to implead himself in the suit.

7. Further, the petitioner/third party stated that under Ex.P.3 the property was purchased at Rs.3,10,000/- whereas the second respondent gave a paper publication mentioning the sale price at Rs.30,00,000/-. It is also observed from the evidence that to prove execution of Ex.A.1 the witness on the side of the petitioner has deposed that he did not know about Ex.A.1. Further the stamp paper was obtained in the name of one Mani, Madurai. It is not purchased either in the name of the petitioner Sikhandar or in the name of Micheal Chatlier.

8. Further the petitioner has not filed any documents regarding the revenue records to prove that whether tax was paid to the Government and whether he is in possession of the suit property has not been proved by any documents.

9. After perusing the oral and documentary evidence, the trial court has observed that the petitioner/third party has filed the petition only to make delay to prevent the decree holder in obtaining the fruit of the decree and dismissed the petition. In my considered opinion, the order of the trial court does not require any interference.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P. (MD) No. 2 of 2013 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The VI Additional District Court, Madurai.

2. The Record Keeper, V.R. Section, (2 copies)

Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.R.Vijayakumar, Advocate, SR.No.58640

+1cc to M/s.R.Surinarayanan, Advocate, SR.No.58502

Dss

RL/6C/3P/RSK/SAR1/27/4/2018

C.R.P. (MD) No.1821 of 2013