

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. NPD No.1144 of 2019

and

CMP Nos.7396 and 7397 of 2019

1. M.Ragjiveeram

2. M.Shanmugasundaram

...

Petitioners

versus

K. Athmanantan

...

Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order passed by the Sub Judge, Tambaram, dated 18.01.2019 in E.P. No.22 of 2016 in O.S. No.231 of 2002.

For Petitioner : Mr.S.Sridhar

For Respondent : Mr.L.Ramkumar

ORDER

The above Civil Revision Petition is filed by the legal representatives of the sole defendant in the suit for specific performance,

challenging the orders passed by the Executing Court viz. the Subordinate Judge, Tambaram in EP No.22 of 2016 in O.S. No.231 of 2002.

2. It is necessary to briefly allude to the facts leading to the filing of the above said Civil Revision Petition. It is seen that the respondent herein and the mother of the revision petitioners, one Amirthavalli had entered into an agreement of sale on 19.01.1989, and the sale agreement was entered into and registered on the very same day. Thereafter, the said agreement was cancelled and the unregistered agreement came to be executed on the very same day. One of the clauses in the said agreement states that the sale deed would be executed within a period of six months from the date of completion of civil proceedings in respect of the said suit property between the said Amirthavalli and others.

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3. The respondent paid a sum of Rs.20,000/- as advance and the balance of Rs.1,05 000/- was to be paid at the time of execution of the sale deed.

4. It is seen that on 17.12.1998, the said Amirthavalli had issued a legal notice to the respondent herein stating that the said agreement was executed as loan for a sum of Rs.20,000/- which was borrowed by her. The said Amirthavalli would state that the clause in the agreement of sale denoting the time frame within which the sale has to be performed is not in accordance with law. She would also state that since the respondent had not performed his part of the obligation in the agreement of sale within the time frame, the agreement is barred by limitation and is unenforceable. The said Amirthavalli had also informed that she was not liable to perform the said contract and that she would refund the advance that she had received. After the receipt of the said notice, the respondent has filed O.S. No.3 of 1999 on the file of the Subordinate Judge, Poonamallee for the specific performance of the agreement, dated 19.01.1989. The said suit was transferred to the Principal Sub Court, Chengalpet and re-numbered as O.S. No.231 of 2002.

5. The said Amirthavalli had entered appearance through the counsel Thiru S. Velmurugan and Thiru K.Balamurugan. But after filing of the vakalath, she has not chosen to contest the suit and ultimately a decree came to be passed in the year 2004, in respect of the suit which is filed in the year 1999. Thereafter, it is seen that the respondent has initiated the execution proceedings in E.P.No.22 of 2016 on the file of the Subordinate Judge, Tambaram and the revision petitioners, who are the children of the said Amirthavalli, have been impleaded since, the said Amirthavalli died on 07.04.2011. The execution proceedings was opposed by the revision petitioners on the following grounds :-

a) that they were unaware about the decree, since it was their mother who was taking care of the overall financial transactions, case proceedings, etc.

(b) that the revision petitioners were not in a position to discharge their debts and, therefore, they are unable to followup the case and engage a lawyer for contesting the case viz., the suit which was decreed ex-parte.

(c) In paragraph 6 of the counter, they have also stated that they have engaged the lawyer, who had filed the certified copy

of the orders in the suit on 15.03.2018 and that due to heavy work load, they were unable to receive the certified copies and it is only on 03.05.2018, that the copies relating to the suit have been obtained.

(d) The next ground on which the counter proceeded was that the revision petitioners due to financial crisis was unable to contest the main suit.

(e) They would state that the execution proceedings is barred by limitation as it is beyond the period of 12 years.

6. The learned Subordinate Judge, Tambaram, after hearing both parties proceeded to allow the execution proceedings on the ground that till date the revision petitioners have not taken any steps to set aside the ex-parte decree passed as early as in the year 2004. Challenging the said order, the revision petitioners are before this Court.

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7. Heard Mr.S. Sridhar, learned counsel for the revision petitioners. The main argument on the side of the revision petitioners is that :

a) the mother was an illiterate and therefore, she is totally unaware about the transaction that she had entered into with the respondent,

b) the suit was premature, in view of the Clause 5 of the agreement of sale

c) the petitioners were in the dark about the pendency of the suit and its subsequent ex-parte decree, and

d) there is an in-ordinate delay in filing the execution proceedings.

8. He would argue that the petitioners have already filed an application for setting aside the ex-parte decree and if at this juncture, the Execution Proceedings were ordered and it would lead to a situation, where the petitioners would not be able to put across a case, and in the event this petition is not allowed they would be put to irreparable damage, as they will be losing right over the property which is in their possession.

9. Per contra, Mr.L. Ramkumar, learned counsel appearing on behalf of the respondent/ decree holder would contend that the first argument with reference to the illiteracy of the deceased Amirthavalli would

fail in the light of the very admission of her sons in the counter filed to the Execution Proceedings, wherein they have, in very clear terms, stated that it was their mother who is the deciding authority of the family, the care-taker of the family and also the entire financial transactions were only known to her.

10. He further submitted that the argument that the suit was premature would fall in the light of the notice, which was issued on 17.12.1998 by the said Amirthavalli, wherein, she has not only terminated the agreement, but she has also proceeded to state that the clause, where the time frame for performance is fixed after the disposal of the suit itself is not in accordance with law and a void condition. This is the reason which has prompted the decree holder to file the suit. The averments that the petitioners were totally unaware about the proceedings is a total false statement, since the mother has entered appearance for contesting the matter from 1999 and it is only thereafter, she had not filed the written statement and was ultimately set ex-parte. As regards the delay in filing the Execution proceedings, the learned counsel would submit that the

same was filed within the period of limitation and, therefore, the same cannot be questioned.

11. Heard the learned counsel on either side and perused the records.

12. It is seen that the agreement of sale has been entered into by the Amirthavalli, and the manner in which the signatures have been affixed in the agreement would clearly indicate that she is not an illiterate and that coupled with the fact that the first notice has been emanated from her on 17.12.1998 wherein, she has instructed the counsel to issue a notice terminating the agreement of sale would clearly indicate that she was in the know of things and this fact is also further highlighted by the admission of her sons in their counter in the Execution Proceedings. Though the Execution Proceedings has been filed as early as in the year 2015 and the respondent came to know about the decree in the year 2015, they have chosen to file an application for setting aside the ex-parte decree only after filing of the Civil Revision Petition before this Court in 2019.

13. It is also seen that the said Amirthavalli, who is aware of the filing of the suit for specific performance, had entered appearance and proceeded to execute the settlement deed in favour of the revision petitioners on 16.11.2009, totally suppressing the agreement of sale as well as the suit that has been filed. Therefore, it is crystal clear that these documents have been created only with the intention to cause prejudice to the decree holder and ensure that the property is not sold.

14. Considering the conduct of the parties, I do not find any infirmity in the order passed by the learned Subordinate Judge, Tambaram. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes/No

Index: Yes/No

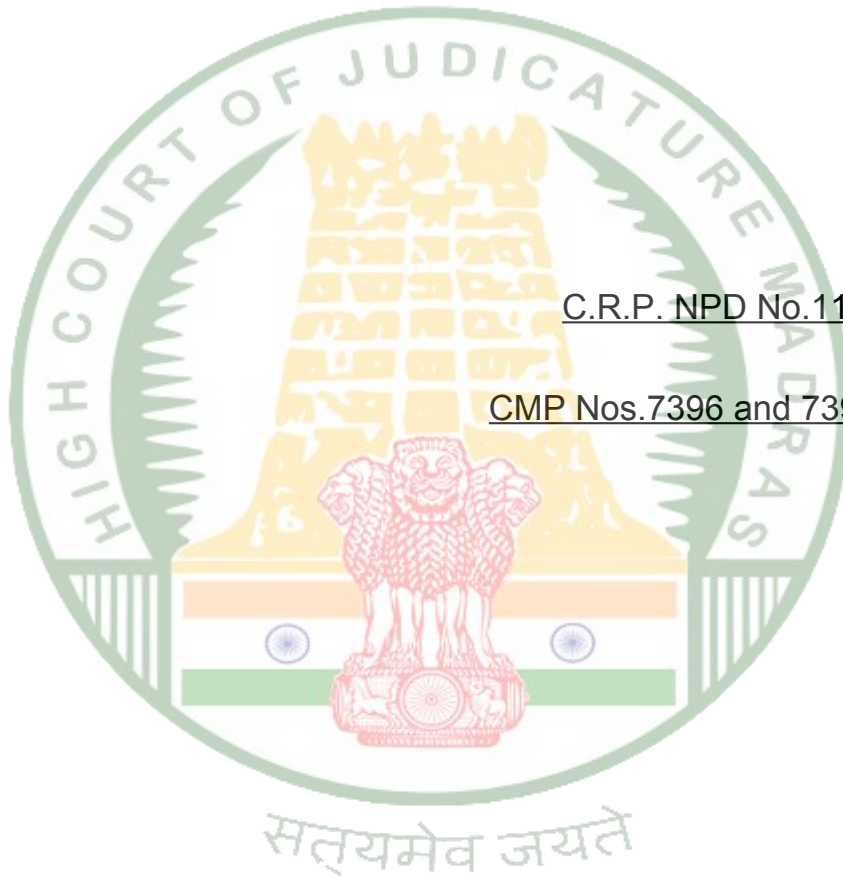
Speaking order/Non-speaking order

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P.T. Asha, J.

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To
The Sub Judge, Tambaram.



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