

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.(PD).No. 67 of 2015

and

M.P.No.1 of 2015

Mrs.T.Kavitha

... Petitioner

-Vs-

1. A.Sathaynarayanan

2. Perumal

3. Easwari

4. Thulasammal

5. S.Ganesan

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India praying to set aside the order E.A.S.R.No.51912/2014 in E.P.No.2948/2007 in O.S.No. 374/1999 dated 24.11.2014 pending on file of the X Asst Judge City Civil Court at Chennai Pending disposal of the civil revision petition on file of High Court, Chennai.

For Petitioner

: Mr.C.P.Muralikrishnan

For Respondents

: Mr.K.Bijai Sundar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 24.11.2014 passed in E.A.(SR).No. 51912/2014 by the X Assistant City Civil Court at Chennai.

2. The brief facts which are required to be noticed for the disposal of this Revision are as follows;

There had been a suit in O.S.No.374 of 1999, filed by one A.Sathyanarayanan and one Perumal against three persons, namely, Easwari, Thulasammal and S.Ganesan who were the defendants in the said suit, seeking for a decree of specific performance in respect of property at door No. 90/126 at Vellala Street, Ayananvaram, Chennai. The suit was decreed on 30.08.2004 and pursuant to the decree, a sale was executed in favour of the decree holders for the said property to an extent of 450 Sq.ft.

3. It is to be noted that, subsequent to the decree, on 07.09.2006, by two separate sale deeds, executed in favour of the present revision petitioner one Mrs.T.Kavitha, who is the third party, claimed to have

purchased the suit property. In addition, she had purchased the adjacent property to the extent of 227 sq.ft, totaling 677 sq.ft.

4. The plaintiffs have filed a suit preventing the petitioner from taking possession on the ground that the EP was filed by the plaintiffs to take delivery of possession of the suit property of 450 sq.ft. The present Revision Petitioner Mrs.T.Kavitha/third party had filed an objection petition. In the said objection petition, it was the claim of Mrs.T.Kavitha that 450 sq.ft. had been purchased after the decree passed and in so far as the remaining 227 sq.ft. is concerned, the same was also purchased by her on 07.09.2006, by a separate sale deed, which was not covered under the suit property. Therefore, under the guise of taking delivery of the suit property, this 227 sq.ft. will not come under the suit schedule property since renumbering process of the survey numbers is taking place. According to the Revision Petitioner, the old S.No. 90/126 has been renumbered as S.No. 90/126A for 448 ½ sq.ft. and the 90/126 B for 240 sq.ft. Therefore, by making a door number mistakenly, the remaining 227 sq.ft, which was exclusively in possession of Mrs.T.Kavitha shall not be delivered to the decree holder

on that ground the objection petition was filed. However, the learned Judge passed the impugned order dated 24.11.2014, proceeding to allow the delivery of property in door No. 126/3B, which is old door No.90/3B. As against the said impugned order, the present Revision has been filed and the present revision is pending from the year 2015 onwards.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. It is brought to the notice of this Court by the learned counsel for the respondents that, pursuant to the impugned order, the delivery of possession has been effected in respect of the suit property, which, according to him, was only 450 sq.ft. and not beyond that and that also has been recorded and the fact with regard to the delivery of possession has also been filed before this Court in the typed set of papers.

7. The learned counsel for the respondents also brought to the notice of this Court that, after realizing the delivery of possession, the third party Mrs.T.Kavitha filed two more applications namely

E.A.No.3409 & 3522 of 2018, seeking for redelivery of possession of the said properties and to execute the sale deed in favour of her and those applications were also rejected by the Execution Court by order dated 23.10.2018 and a copy of the said order passed by the learned Judge, rejecting the two applications filed by the third party Mrs.T.Kavitha are also filed before this Court in the typed set of papers where the learned Judge has recorded the following reasoning in Paragraph 12 which is extracted here under;

“ 12. While in so, it is the duty of the petitioner to establish that the decree holders took 670 sq.ft of the property. The petitioner has not chosen to take steps for appointment of Commissioner after delivery of property in order to show the exact extent taken by the decree holders in delivery. The petitioner could file a commission application before the delivery of property with the sole intention of procrastinating the execution proceedings. But, as already stated, she has not taken steps for appointment of Commissioner after delivery of property. Without protracting the execution proceedings by the petitioner obstructor, had the petitioner handed over 450 sq.ft of property to the decree holders, now the petitioner need not approach this Court for redelivery. The petitioner has sought for redelivery of entire 450 sq.ft of property. She was ordered

to be removed from the above extent of property. Further more, this Court has also executed a sale deed in favour of the decree holders for 450 sq.ft of property. Therefore, the petitioner cannot seek for redelivery of the property. Absolutely there is no materials to show that the decree holders have taken excess extent of property in delivery.”

8. The learned Judge, in the said order, dated 23.10.2018, also made an observation that the said third party Mrs.T.Kavitha is represented by one Ganesan claimed to be the power of attorney and genuinity of the power of attorney itself was doubted by the learned Judge and in this regard, he has given the following findings;

“ 15. From the above decision, it is evident that the petitioner shall obtain prior permission to appear through a power agent. The petitioner has not filed any application under order 3, Rule 1 and 2 of CPC seeking for permission to appear through a power agent. Therefore, the applications are itself not maintainable. The existence of order of status quo in respect of 240 sq.ft would not help the petitioner for the reason that the petitioner failed to establish that the decree holders took the excess extent of 240 sq.ft. Further more, the petitioner sought for to modify the decree. The executing court cannot go behind the decree and the executing

court cannot modify the decree. As per the order passed in CRP.No. 6/2017 by the Hon'ble Gauhati High Court in Smt.Teteri Devi V.S.Shri Bhaskar Saikia relied on by the learned counsel for the petitioner, the decree holder can take delivery without any excess delivery of land. In this case, there is no proof that the decree holders took excess extent of property. There is no merit in these applications.

16. In the result, these applications are dismissed with cost of the decree holders.”

9. Though these factors have subsequently taken place, which disclose the facts that the delivery of possession ordered through the impugned order has been effected and two applications in E.A.Nos. 3409 & 3522 of 2018 filed by the third party/Revision Petitioner also were rejected by order dated 23.10.2018. However, the said orders admittedly have not so far been assailed by the third party Mrs.T.Kavitha.

10. Be that as it may, the petitioner is none, but a third party in the present revision who cannot agitate the order of delivery of possession after having accepted all the said factors of the case. Since, the third party Mrs.T.Kavitha has already filed two applications unsuccessfully as stated above, this Court does not find anything new to adjudicate in this Revision Petition.

11. In view of the above reasonings, this Court feels that the revision petition deserves to be rejected. Accordingly it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.11.2019

Index: Yes / No
Speaking order / Non speaking order
kmm

To
The X Asst Judge City Civil Court,
Chennai

C.R.P. (NPD) No. 67 of 2015

R. SURESH KUMAR, J.

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