

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 27.11.2019

Pronounced On : 10.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4188 of 2013

and

M.P.No.1 of 2013

1. Saraswathi

2. Logesh

3. Minor Devaraj

Son of Late Mohanasundaram
rep. By his natural guardian and mother
Saraswathi

.. Petitioners

Vs

1. Kanagaraj

2. Nallammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and Decretal order dated 30.09.2013 made in I.A.----/2013 in I.A.No.494 of 2008 in OS No.18 of 2001, on the file of the Subordinate Court, Athur.

For Petitioners : Ms.Sripriya
for Mr.V.Raghavachari

For Respondents : Mr.S.Senthil (for R1)

ORDER

Aggrieved over the order dated 30.09.2013, passed in unnumbered IA---/2013 in IA No.494 of 2008 in OS No.18 of 2001, on the file of the learned Subordinate Judge, Athur, the present petitioners who are the respondents in the above referred IA have preferred the Civil Revision Petition and prayed to set aside the order dated 30.09.2013, passed in unnumbered IA---/2013 in IA No.494 of 2008 in OS No.18 of 2001.

2. Earlier, the 1st petitioner, Saraswathi and her husband late Mohana Sundaram, filed a suit as against one Nallammal, the 2nd respondent, seeking the relief of specific performance, directing the said Nallammal to execute the sale deed in favour of the plaintiffs, within a period of one month after receiving the balance sale consideration of Rs.1,13,000/-. On 01.10.2004, the suit was decreed in favour of the plaintiffs viz., 1st petitioner Saraswathi and her husband viz., Mohanasundaram. Thereafter, the plaintiffs in the above referred suit has not deposited the balance of sale consideration of Rs.1,13,000/- within the date specified by the Court below. Only on 21.03.2008, they filed an application in IA No.494 of 2008, before the Court below and prayed to excuse the delay of 1388 days in depositing the balance of sale consideration.

3. During the pendency of the said application, the subsequent purchaser/1st respondent herein viz., Kanakaraj, a third party filed an interlocutory application under Order I Rule 10(2) of the Code of Civil Procedure and prayed to implead him as a party to the proceedings in IA No.494 of 2008. The learned Subordinate Judge, Athur, after affording an opportunity to the revision petitioners by order dated 30.09.2013, allowed the unnumbered IA---/2013 filed by the 1st respondent/subsequent purchaser and permitted him to be impleaded as party to the proceedings in IA No.494 of 2008 in OS No.18 of 2001. Aggrieved over the said finding, the petitioners are before this Court with the present Civil Revision Petition.

4. When the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioners contended that after passing the decree, no provision is available for impleading a third party, as a party to the proceedings. In the impugned order passed, the Court below, without mentioning any specific reasons, and merely stating that on considering the facts and circumstances, allowed the application and permitted the 1st respondent to be impleaded as a party to the proceedings in IA.No.494 of 2008 in OS No.18 of 2001.

5. Per contra, the learned counsel appearing for the 1st respondent/subsequent purchaser would contend that since the relief under

Section 28 of the Specific Relief Act, is discretionary and being the subsequent purchaser of the suit property, the 1st respondent herein is entitled to the relief prayed in unnumbered IA--/2013 in IA No.494 of 2008. Only on considering the said circumstances, the Court below allowed the application filed by the 1st respondent herein, and the same does have any material irregularity.

6. Upon considering the arguments advanced by either side, before seeing the merits and demerits of the petition filed by the revision petitioners, it is necessary to see Section 28 of the Specific Relief Act, which reads as follows:

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the Court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the Court

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(a) shall direct the purchaser or the lessee, if he has obtained

possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the Court.

7. Accordingly, as per the above said provision, a decree holder is entitled to file an application for extending the time for depositing, without filing any separate suit. In fact, when a decree of specific performance of

sale was granted in favour of the 1st revision petitioner/deed holder, she was directed to deposit the balance sale consideration within a specific period. However under Section 28 of the Specific Relief Act, or under Section 148 of CPC, the decree holder is entitled to file an application for extending the period towards the deposit of balance sale consideration.

8. In the case in our hand, since the sale deed is not executed, the question of limitation does not arise. However in the application filed in IA No.494 of 2008, the petitioners in this Civil Revision Petition has prayed to to extend the time, by excusing the delay of 1388 days from 01.11.2004 to 20.08.2008.

9. On a close reading of the prayer sought for by the revision petitioners, before the trial Court in IA No.494 of 2008, they have not prayed to extend the time for depositing the balance sale consideration, rather, they have sought only for excusing the delay. So the prayer itself is not clear and vague. In fact, it is not in accordance with Section 28 of the Specific Relief Act.

10. However, through this Civil Revision Petition, the revision petitioners have challenged the order dated 30.09.2013, in which the 1st respondent herein/subsequent purchaser, was impleaded as a party to the

proceedings. Therefore, it is not necessary for this Court to decide whether the application filed by the revision petitioners in IA No.494 of 2008, is in accordance with law or not. In otherwise, it is not in dispute that the suit property is as of now with the 1st respondent/subsequent purchaser. Only in the said circumstances, he has filed a suit in OS No.343 of 2009 on the file of the District Munsif, Athur, as against the revision petitioners, seeking the relief of declaration, declaring that the 1st respondent herein is the absolute owner of the suit property. In the said suit, the 1st respondent herein claim that he is the owner of the suit scheduled property and also the said property is in the possession of the 1st respondent herein.

11. In this occasion, though the 1st respondent is not a necessary party to decide the suit filed by the revision petitioners in OS No.18 of 2001, which has already been disposed, yet, for the reason that the 1st respondent herein is in the possession of the suit scheduled property, he is a party to decide the issue involved in IA No.494 of 2008.

12. In general, if a person who is likely to suffer from the order of the Court and has not been impleaded as a party, has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

13. Therefore, if the 1st respondent herein, who is the petitioner in the impleading petition viz. Unnumbered IA---/2013, is not added as a party, and if suppose the IA No.494 of 2008 filed by the revision petitioners, is decided in their favour, then, the only aggrieved party is the 1st respondent herein. Hence, it cannot be said that the impugned order passed by the Court below is having any material irregularity.

14. Therefore, in the light of the above discussion, this Court is of the considered view that the 1st respondent being the subsequent purchaser and also as of now, he is in the possession of the suit schedule property, he was treated as a necessary party to decide the application filed by the revision petitioner before the trial Court in IA No.494 of 2008. Therefore, the impugned order passed by the Court below is found correct and the same is sustained. The Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes

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To

The Subordinate Judge, Athur.

10.12.2019

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R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (NPD) No.4188 of 2013
and M.P.No.1 of 2013

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