

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 05.07.2018

Orders Pronounced On : 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.No.258 of 2016
and
C.M.P.No.1213 of 2016

1.Subbathal
2.Padmanabhan
3.Sivakumar
4.Raghunathan

... Petitioners /JDs

Vs

P.Irudayaraj ... Respondent/DH

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for records in respect of fair and decreetal order made in E.A.No.689 of 2009 in E.P.No.212 of 2008 in O.S.No.268 of 2005 dated 21.08.2012 passed by the II Additional Subordinate Judge, Coimbatore and set aside the same.

For Petitioner : Mr.V.Raghavachari
for Mr.P.Kannan Kumar

For Respondent : Mr.I.Abrar Mohamed Abdullah

O R D E R

The revision petitioners are the Judgment-debtors and the respondent is the decree holder. The subject matter of the property originally belonged to one Venu Gopal, the father of the petitioners. The father of the petitioners herein entered into sale agreement with the respondent on 14.03.2004 for sale consideration of Rs.3,69,000/-.

2 The respondent paid Rs.2,13,000/- as advance amount. Since the father of the petitioners was not ready and willing to perform his part of the contract, the respondent filed a suit for specific performance against the said Venu Gopal, the father of the petitioners. The suit was decreed on 20.12.2005 and a direction was issued to pay the balance sale consideration within two months from the date of decree. The respondent failed

to deposit the balance sale consideration within time and has not filed any petition for extension of time.

3 Subsequently, the respondent filed execution petition to execute the decree in E.P.No.212 of 2008 before the II Additional Subordinate Judge, Coimbatore. During the pendency of E.P.No.212 of 2008, the revision petitioners filed an application in E.A.No.689 of 2009 under Section 47 of Civil Procedure Code to declare the decree passed by the learned Principal Subordinate Judge, Coimbatore, in O.S.No.268 of 2005 as an inexecutable decree. The said petition was dismissed by the learned II Additional Subordinate Judge, Coimbatore. Challenging the said order, the petitioners herein have filed the present revision petition before this Court.

4 It could be seen that the subject matter of the property originally belongs to one Venu Gopal, who is none other than the father of the revision petitioners herein. He entered into a sale agreement with the respondent for a sum of Rs.3,69,000/-, for which the respondent paid an advance amount of Rs.2,13,000/-. Since the said Venu Gopal has not executed the sale deed in favour of the respondent, the respondent filed the suit against the said Venu Gopal in O.S.No.268 of 2005 on the file of the learned Principal Subordinate Judge, Coimbatore. The learned Principal Subordinate Judge, Coimbatore, passed an ex-parte decree on 20.12.2005 and to pay the balance sale consideration within two months from the date of decree. Though the respondent has not deposited the balance sale consideration within two months as directed by the learned Principal Subordinate Judge, Coimbatore, in the said decree, the respondent filed an application in I.A.No.1021 of 2007 seeking extension of time for depositing the balance sale consideration and the learned Principal Subordinate Judge, Coimbatore also permitted the respondent to deposit the amount. Thereafter, he has also deposited the amount before the Court. Subsequently, the respondent filed an execution petition before the learned II Additional Subordinate Judge, Coimbatore, in E.P.No.212 of 2008 for execution of the decree, directing the revision petitioners to execute the sale deed in favour of the respondent. The Court has executed the sale deed on behalf of the revision petitioners. No doubt, neither the said ex-parte decree was challenged nor the order in I.A.No.1021 of 2007 permitting the respondent to deposit the balance sale consideration into Court was challenged, before the competent Court. Therefore, the decree passed by the learned Principal Subordinate Judge, Coimbatore, in O.S.No.268 of 2005 is final. So, during the pendency of the said E.P.No.212 of 2008, the revision petitioners who are the legal heirs of the said Venu Gopal, filed the application in E.A.No.689 of 2009 under Section 47 of Civil Procedure Code, to declare the decree passed by the

learned Subordinate Judge in O.S.No.268 of 2005 as an inexecutable decree. Since the respondent has not deposited the balance sale consideration within two months as mentioned in the decree, the learned Subordinate Judge, after considering the fact that the respondent has already deposited the amount with the permission of the Court and the petitioners have not challenged order passed in I.A.No.1021 of 2007, permitted the respondent to deposit the amount. Therefore, the petition filed under Section 47 of Civil Procedure Code is not maintainable. Therefore, the learned II Additional Sessions Judge, Coimbatore, has dismissed the petition. Challenging the said order, the revision petitioners have filed the present revision before this Court.

5 Heard both sides and perused the materials available on record.

6 It is seen that the respondent obtained a decree in O.S.No.268 of 2005 dated 20.12.2005 and though the respondent did not deposit the balance sale consideration within two months as stipulated in the decree, since, the respondent was unable to deposit the sale consideration within a period of two months time, the respondent filed an application in I.A.No.1021 of 2007 seeking time to deposit the balance sale consideration and after obtaining the permission from the Court, he also deposited the amount. The petitioners have not filed any petition before the competent Court for rescinding the contract. Therefore, unless the Judgment and decree passed by the competent Court is set aside by the Court, and that the contract was not rescinded the decree holder is entitled to file an execution petition and get the decree executed. The petitioners are the legal hires of the said Venu Gopal and they have not challenged the decree and therefore the decree obtained by the revision petitioner is final and when once the Court has granted the extension of time for depositing the amount and that the respondent has also deposited the balance amount the petitioners has not challenged the said order passed by the Court. Subsequently, they cannot challenge the decree as in executable on the ground that the decree holder not deposited the balance sale consideration with the time stipulated by the Court.

7 Therefore, the submission made by the learned counsel for the petitioner that the decree is not executable, cannot be accepted. Therefore, the learned Subordinate Judge has rightly dismissed the petition filed by the petitioners. There is no merit in the revision, and the revision petition is liable to be dismissed.

8 In the result the present Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

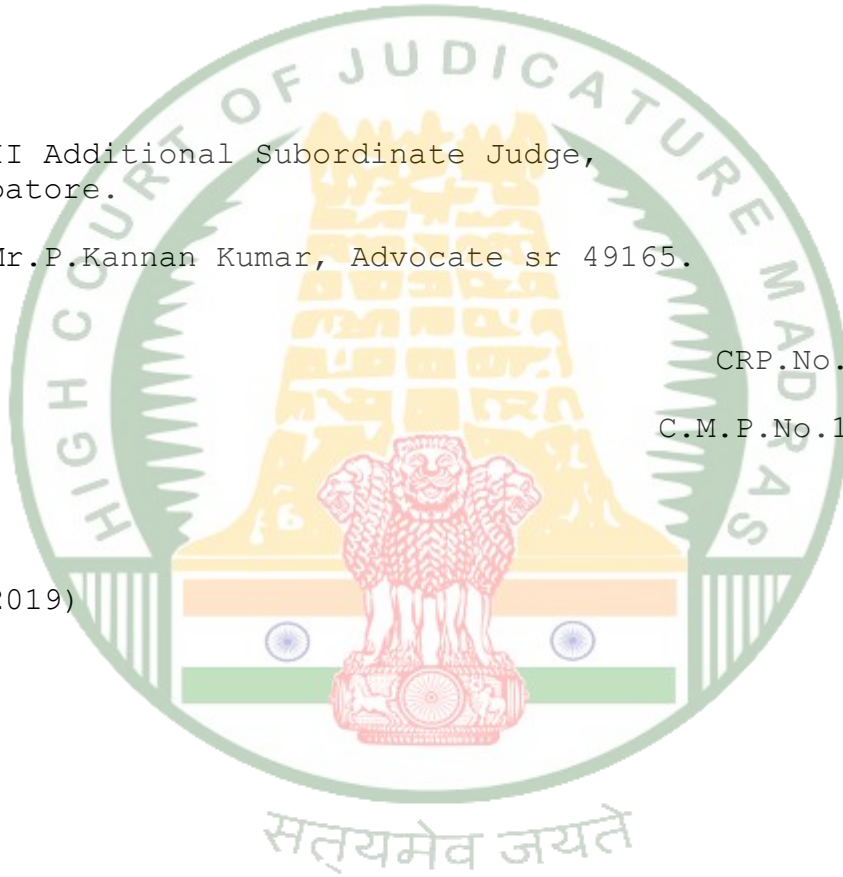
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To

The II Additional Subordinate Judge,
Coimbatore.

+1 CC to Mr.P.Kannan Kumar, Advocate sr 49165.

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RSI (CO)
SP (23/07/2019)



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