

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2018

Pronounced on : 20.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(NPD).No.2427 of 2018
and
C.M.P.Nos.14933 & 23377 of 2018**

Bagyalakshmi .. Petitioner

V.

Ramathal .. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 09.08.2018 made in E.P.No.717 of 2017 in O.S.No.424 of 1988 on the file of the learned II Additional Sub-ordinate Judge, Coimbatore.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondent : Mr.P.Saravana Sowmiyan

ORDER

Challenge in the present revision is to the order dated 09.08.2018 passed in the execution proceedings in E.P.No.717 of 2017 in O.S.No.424 of 1988 on the file of the learned II Additional Sub-ordinate Judge, Coimbatore, whereby, the decree for specific

performance of the Sale Agreement dated 10.12.1986, was directed to be executed.

2. Heard Mr.S.Mukunth, learned counsel for the petitioner and Mr.P.Saravana Sowmiyan, learned counsel appearing on behalf of the respondent.

3. When the plaintiff/respondent herein had filed a suit in O.S.No.424 of 1988, seeking for execution of the Sale Deed in terms of the Sale Agreement dated 10.12.1986 or direct the defendants to convey 2/3rd share of the suit property, the trial Court had decreed the suit on 04.09.1998, directing the defendants 1 and 2 to execute the Sale Deed as per the terms of the Sale Agreement dated 10.12.1986. The appeal in A.S.No.13 of 1999, filed by the petitioner herein against the judgment and decree in O.S.No.424 of 1988, came to be dismissed. The Second Appeal in S.A.No.1819 of 2001 before this Court, came to be allowed and the suit was dismissed. On further appeal, the Hon'ble Apex Court, by a judgment and decree dated 22.08.2017, had set aside the order of this Court and decreed the suit.

4. The learned counsel for the petitioner submitted that this petitioner/second defendant has half share in the suit property and

since the third defendant did not have any share in the suit property, the Execution Petition seeking for execution of 1/3rd share in the suit property, is not maintainable.

5.The learned counsel for the respondent, on the other hand submitted that, pending the appeal before the Hon'ble Apex Court, the defendants 1 and 3 had compromised and executed the Sale Deed in favour of the respondent herein towards their 2/3rd shares. Therefore, the petitioner herein is obliged to execute the Sale Deed for the remaining 1/3rd share to the respondent herein.

6.It is not in dispute that the defendants 1 and 3 had executed 2/3rd of their shares in the suit property to the petitioner herein. As per the decree, the defendants 1 and 2 were required to execute the Sale Deed in terms of the Sale Agreement dated 10.12.1986. The share of the petitioner herein has not been determined either by the trial Court or the Apex Court. When the decree is very specific to the effect that the defendants 1 and 2 should execute a Sale Deed in favour of the plaintiff, the petitioner herein/second defendant cannot give a new meaning to the decree by stating that she is entitled to more than 1/3rd share in the suit property. Since the defendants 1 and 3 had already sold their 2/3rd shares in the suit property, the petitioner/second defendant is

bound to execute the remaining 1/3rd share in favour of the respondent herein in terms of the decree. It is settled proposition of law that the Execution Court is bound by the decree alone and cannot traverse beyond the scope of the decree.

7. When the decree is specific to the effect that the defendants 1 and 2 should execute the Sale Deed to the plaintiff/respondent herein and in the absence of any finding in the Hon'ble Apex Court judgment holding that the petitioner is entitled to half share in the suit property, there is no infirmity in the order of the Execution Court, rejecting the claim made by the petitioner herein and ordering the Execution Petition.

8. As such, I do not find any merits in the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Order : Speaking/Non Speaking

DP

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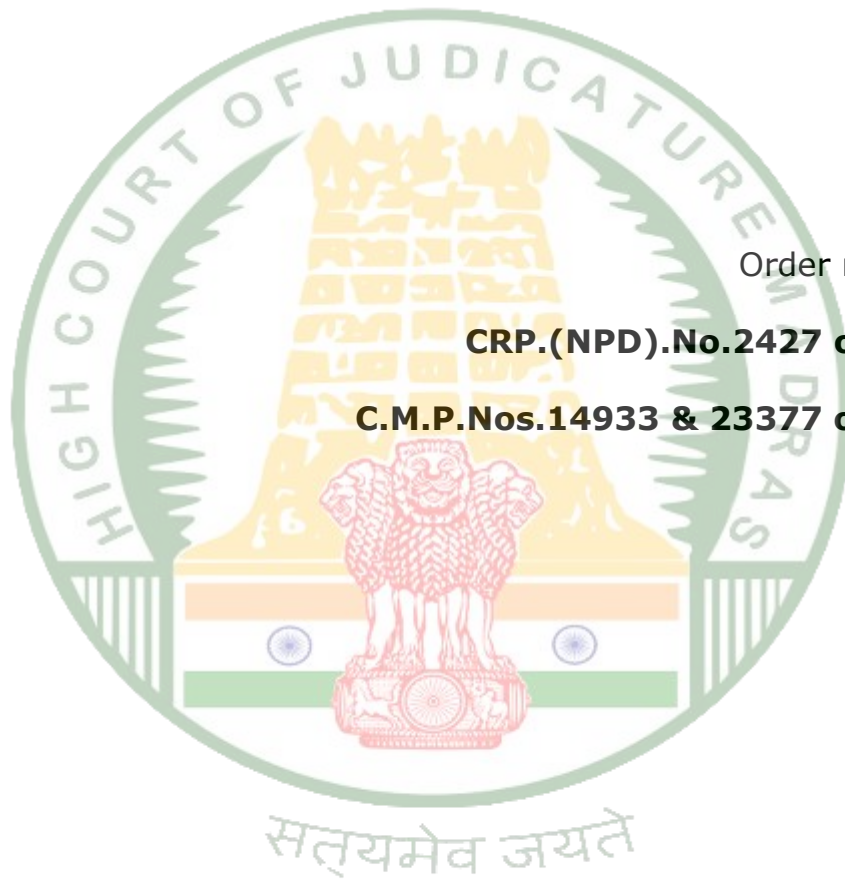
The II Additional Sub Court,
Coimbatore



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M.S.RAMESH, J.

DP



Order made in

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