

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3419 of 2019

and

C.M.P. No. 22494 of 2019

M. Dhanasekaran ... Petitioner

-Vs-

S. Krishnan ... Respondent

Prayer : Petition filed under Section 115 of the Civil Procedure Code to set aside the order passed in E.P. No. 1649 of 2018 in O.S. No. 425 of 2012 dated 18.07.2019 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr. N. Rajan

ORDER

This Civil Revision Petition has been filed against the order of delivery of possession ordered by the IX Assistant City Civil Court, Chennai, in E.P. No. 1649 of 2018 in O.S. No. 425 of 2012, by order dated 18.07.2019.

2. Before the Execution Court, the revision petitioner is the judgment debtor, against whom, in the EP, the order of delivery of possession of suit property has been passed, as against which, the present revision petition has been filed.

3. Mr. N. Rajan, learned counsel appearing for the revision petitioner would submit that, before the Execution Court, an application under Section 47 of the Civil Procedure Code have already been filed by the judgment debtor which has not even numbered and without numbering the same and deciding the said issue raised in Section 47 application filed by the revision petitioner / judgment debtor, the Execution Court ought not to have ordered the Execution Proceedings by ordering delivery of possession of the suit property, therefore, the said order which is impugned, is liable to be interfered with.

4. I have heard the learned counsel appearing for the revision petitioner and gone through the documents filed before this Court including the additional typed set of papers.

5. Actually the suit in O.S. No. 425 of 2012 was filed by the respondent / decree holder against the revision petitioner / judgment debtor for a decree, directing the defendant to vacate and hand over vacant possession of the suit property.

6. As far as the suit property is concerned, it is the case of the revision petitioner / defendant, i.e., judgment debtor that, the property belongs to the defendant who wanted to sell the same to the plaintiff for a sale consideration of Rs.14,50,000/- (Rupees Fourteen Lakhs and Fifty Thousand Only), pursuant to which, a sale agreement have been made between the parties and an advance of a sum of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) admittedly was received by the revision petitioner / judgment debtor.

7. Thereafter within a stipulated time, according to the learned counsel for the revision petitioner, the respondent / decree holder had not come forward to pay the remaining sale consideration to get executed the sale deed and thereafter, there has been number of

issues between the parties and matter has gone to the Police Station, on which Criminal Original Petition has been filed before the Competent Court and thereafter, it is the specific case of the revision petitioner / judgment debtor that, on 06.08.2007, the respondent / plaintiff under coercion and threat, obtained a forcible sale deed in favour of him from the revision petitioner / judgment debtor and pursuant to the said sale deed, though the suit property had been with the possession of the revision petitioner / judgment debtor, the plaintiff / respondent has filed the suit and the said suit was decreed by the trial Court, as against which, the first appeal was filed in A.S. No. 275 of 2018 by the revision petitioner / judgment debtor before the XVII Additional City Civil Court, which, by Judgment and Decree dated 18.12.2018, dismissed the said first appeal, thereby, the judgment and decree made by the trial Court on 05.02.2018 has become final.

8. Admittedly, there has been no second appeal filed by the revision petitioner / judgment debtor against the judgment and decree of the First Appellate Court.

9. In the parallel proceedings, according to the learned counsel for the revision petitioner, as against the sale deed dated 06.08.2007, suit has been filed by the judgment debtor to declare the sale deed as null and void in O.S. No. 13661 of 2010 on the file of the V Fast Track Court, Chennai, where the said suit was dismissed by the judgment and decree dated 23.03.2011, as against which, according to the learned counsel for the revision petitioner, the first appeal was filed unsuccessfully and second appeal was also filed unsuccessfully, therefore in respect of the said plea raised by the revision petitioner / judgment debtor against the sale deed dated 06.08.2007, that it was obtained in coercion and threat, the revision petitioner suffered with a decree, which has been confirmed up to the High Court.

10. Therefore in that context, the present attempt made by the learned counsel for the revision petitioner / judgment debtor before the Execution Court, by filing an application under Section 47 of the Civil Procedure Code to agitate the very same issue once again stating that, the suit property has not been sold or bequeathed for valid

consideration by the judgment debtor to and in favour of the decree holder, is nothing but a futile exercise. Therefore, for the said reasons, the Execution Court could not entertain the said application filed under Section 47 of the Civil Procedure Code.

11. If at all any issue has been left, which has not been adjudicated or not been answered in a suit after trial between the parties to the suit, certainly those issues can very well be adjudicated not by a separate suit but by an application under Section 47 of the Civil Procedure Code in an Execution Proceedings. However if any issues have already been adjudicated and concluded finally and the same has been confirmed by the Appellate Court also, those issues cannot be re-agitated once again by either party to the suit in the Execution Proceedings by way of an application under Section 47 of the Civil Procedure Code.

12. Therefore, the plea now raised by the learned counsel for the revision petitioner that, the application filed under Section 47 of the Civil Procedure Code ought to have been decided first before ordering

delivery of possession in the EP through the impugned order, cannot hold any water, therefore, the said plea is liable to be rejected.

13. In that view of the matter, the decree holder is entitled to get the execution of the decree, as the decree is executable. Accordingly the present revision petition does not have any merits to consider, hence it deserves to be rejected, accordingly it is rejected.

14. Hence, the Civil Revision Petition is dismissed accordingly. Consequently, connected Miscellaneous Petition is also closed. No costs.

30.10.2019

Index: Yes / No

Speaking order / Non speaking order

vji

To

The IX Assistant City Civil Court,
Chennai.

7/8

R. SURESH KUMAR, J.

vji



**C.R.P. (NPD) No. 3419 of 2019
and
C.M.P. No. 22494 of 2019**

WEB COPY

30.10.2019