



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.4194 of 2019
and
C.M.P.No.27318 of 2019

Lakshmi

... Petitioner

-Versus-

1.Shanmugam
2.Nagarajan

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.08.2019 made in E.A.No.189 of 2014 in R.E.P.No.48 of 2013 in O.S.No.58 of 2009 by the Principal District Munsif, Kallakurichi, Villupuram District.

For Petitioner : Mr.R.Ezhilarasan

ORDER

This civil revision petition has been filed against the order dismissing the claim petition filed by the petitioner, who is a third party to the proceedings, under Section 47 of CPC.

2. Earlier, the 1st respondent filed a suit for specific performance of contract of agreement of sale in respect of a house site, which was decreed on 04.01.2011 and the 2nd respondent was directed to execute the sale deed as per the agreement of sale dated 05.10.2007. The above said decree has become final. Thereafter, the 1st respondent had initiated an execution proceedings in E.P.No.48 of 2013 for execution of the sale deed pursuant to the decree. Pending the above execution proceedings, the petitioner herein, who is none other than the wife of the 2nd respondent, has filed the application under revision on the ground that she is the absolute owner of the property in S.No.330/88 whereas in respect of the very same property the 1st respondent filed the suit for specific performance based on an agreement of sale mentioning the survey number as S.No.330/2A and had obtained a decree in his favour. Even though the survey numbers are different, the schedule and boundaries of the properties are one and the same. According to



the petitioner, the property in question absolutely belongs to her.

3. On considering the available materials, the Executing Court dismissed the claim petition holding that such defence had been raised during trial by the 2nd respondent who was the defendant and is none other than the husband of the petitioner and the same had been negatived by the trial court. Therefore, now, it is not open to the petitioner to raise such a plea again at the execution stage. That apart, so far as the difference in survey numbers and the boundaries of the property is concerned even though the petitioner claimed that both the schedules are one and the same, no documents were produced to show that the schedule of property are one and the same.

4. This civil revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and perused the records carefully.

5. As far as first point raised by the petitioner regarding the ownership of the property as rightly held by the Executing Court, that plea was raised before the trial court itself and the same was negatived and therefore, the petitioner cannot again raise the very same plea before the executing court.

6. Coming to the identity of the property is concerned, even though the petitioner claims that the schedule of both survey numbers are one and the same, no document has been produced to establish the same. In this regard, the Executing Court also held that there was no document in support of the claim of the petitioner.

7. Thus, on a careful perusal of the available materials, this court is of the view that the Executing Court on considering the facts and circumstances of the case has rightly dismissed the claim petition of the petitioner in which this court does not find any illegality or irregularity warranting interference at the hands of this court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



kmk

To

1.The Principal District Munsif, Kallakurichi, Villupuram District.

+1 cc to M/s.R.Ezhilarasan ,Advocate Sr.No. 105910

Civil Revision Petition
No.4194 of 2019

KJ (CO)
RMP (15/07/2020)