



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD)No.1400 of 2012

and

M.P(MD) No.1 of 2012

1.George
2.Chinnarani

... Petitioners

Vs.

1.M.Rajayyan (Died)
2.G.Kanagam
3.K.Prema
4.K.Nirmala
5.K.Vimala
6.R.Ravikumar
7.R.Selvakumar

... Respondents

(Respondents 2 to 7 are brought on record as LR's of the deceased sole respondent vide order dated 02.07.2015 made in M.P(MD) No.2 and 3 of 2012)

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decretal order dated 14.03.2012 of the learned Additional District Munsif, Padmanabhapuram made in I.A.No.1000 of 2011 in O.S.No.568 of 1977 dismissing the Said I.A.

For Petitioners : Mr.K.N.Thampi

For Respondents : No appearance

ORDER

The legal heirs of the defendant in O.S.No.568 of 1977 on the file of the Additional District Munsif, Padmanabhapuram, are the revision petitioners before this Court. This civil revision petition has been filed against the order dated 14.03.2012 made in I.A.No.1000 of 2011 in O.S.No.568 of 1977, which was an application moved by the legal heir of the plaintiffs in O.S.No.568 of 1977 to reopen the final decree proceedings in I.A.No.598 of 1982, which was closed on 12.08.1982.

2. The chronology of the facts giving rise to the filing of



the revision petition are narrated hereinunder:-

1977 - The suit in O.S.No.568 of 1977 filed by the Kunjukrishna Pilai and Rohini Amma for redemption against the Kumaraswamy.

08.06.1977 - The first plaintiff in the suit in O.S.No.568 of 1977 and Lekshmi Kunju Ammal, the daughter of second plaintiff, had jointly entered into an agreement of sale in favour of the Rajayyan, who is the deceased respondent herein.

26.09.1978 - The suit for redemption is decreed directing the plaintiffs to pay a sum of Rs.300/- on or before 26.11.1978 to the defendant. On such payment, the defendant is directed to submit the documents in his possession given in respect of the suit property to the plaintiff. In default of the said payment, it was open to the defendant to apply for final decree for sale of the mortgage property. The amount derived from the sale proceeds after defraying the expenses was to be given to the plaintiff.

1979 - The suit for specific performance in O.S.No.324 of 1979 has been filed by the said Rajayyan and the same was decreed and the judgment and decree was confirmed on appeal in A.S.No.96 of 1981.

23.01.1982 - The appeal filed against the preliminary decree in O.S.No.568 of 1977 is confirmed in A.S.No.144 of 1978.

12.03.1982 - I.A.No.582 of 1982 is filed by the defendant for passing of final decree proceedings.

12.08.1982 - The final decree proceeding in I.A.No.582 of 1982 was closed for the present by the petitioner with an endorsement that since there was an injunction in another suit in O.S.No.293 of 1982 it shall revived after the disposal of O.S.No.293 of 1982.

1984 - S.A No.1604 of 1984 filed by the defendant challenging the judgment and decree in the specific performance suit.



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23.01.1998 - S.A.No.1604 of 1984 was partly allowed with the following observations:-

14. It is admitted that the plaintiff has paid more than Rs.3,000/- for the sale deed. The agreement itself was executed for Rs.5,000/-. As the first defendant is entitled to only half share and as the third defendant has right in the property, the plaintiff is entitled to obtain sale deed only from the first defendant in respect of half share without payment of any further amount.

15. In the result, this second appeal is allowed. The judgment and decree by the Courts below that the plaintiff is entitled to decree for specific performance in respect of entire property are set aside and the judgment and decree are modified as follows:-

(i) The plaintiff is entitled to decree for specific performance in respect of half share only in the suit property.

(ii) In the circumstances of the case, I direct the parties to bear their respective cost throughout.

03.01.2003 - The suit in O.S.No.293 of 2003 was dismissed and therefore there was no bar in proceeding with the final decree proceedings.

2007 - The holder of the decree for specific performance namely V.Rajayyan filed E.P.No.40 of 2007 for executing the decree.

2008 - The mortgagee S.Kumaraswamy had filed an application in E.A.No.117 of 2008 under Section 47 of the Code of Civil Procedure questioning the executability of the decree and the same was dismissed on 16.06.2010.

14.10.2009 - The defendant S.Kumaraswamy died.

2010 - Order passed in E.A.No.117 of 2008 has been challenged in C.R.P(MD) No.1527 of 2010.



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03.11.2010 - C.R.P (MD) No.1527 of 2010 was disposed of with the following directions:-

In view of the above, this Civil Revision Petition is allowed, the impugned order is set aside and the execution proceedings are remitted back to the executing Court. The executing Court is free to execute the decree for specific performance as per paragraph 14 of the judgment in S.A.No.1604 of 1984 as against the first defendant or his legal heirs in respect of half share of the suit schedule property alone. Thereafter, it is open to the purchaser, who steps into the shoes of one of the mortgagors to work out their remedy in the other proceedings viz., I.A.No.582 of 1982 in the mortgage proceedings subject to all the rights and defences available to both the parties in those proceedings. Consequently, connected miscellaneous petition is closed. No costs.

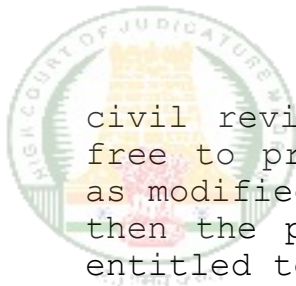
26.04.2011 - The fair sale deed is executed in favour of the respondent herein and execution proceedings are closed.

July 2011 - The respondent herein filed I.A.No.1000 of 2011 to reopen the final decree proceedings. The revision petitioner herein challenging the same by stating that the petition was belated, since the endorsement made in I.A.No.582 of 2018 was that it would be revived on the disposal of O.S.No.293 of 1982 and the said suit has been disposed as early as on 03.01.2003, whereas the present application is filed only in the year 2011.

14.03.2012 - I.A.No.1000 of 2011 is allowed. Against which, the revision petitioner has filed the present civil revision petition.

3. Heard Mr.K.N.Thambi, learned counsel for the petitioners and perused the papers.

4. The two orders play a pivotal role in disposing of the present revision petition. This Court by its judgment and decree in S.A No.1604 of 1984 was pleased to allow the second appeal and granted the decree for specific performance by modifying the same to state that the respondent/plaintiff herein would be entitled to the decree only with respect to the half share in the suit properties. The said judgment and decree has attained finality. Pursuant to this judgment and decree, another order has been passed by this Court in C.R.P(MD) No.1527 of 2010 which was filed challenging the order in E.A.No.117 of 2008 in E.P.No.40 of 2007. The learned Judge has allowed the civil revision petition and while allowing the



civil revision petition has stated that a) the executing court is free to proceed with the execution decree for specific performance as modified in S.A.No.1604 of 1984. b) After the decree is executed, then the purchaser should step into shoes of the mortgagor and be entitled to workout their remedy in I.A.No.582 of 1982.

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5.The record would indicate that the sale deed was registered in favour of the respondent herein on 28.06.2011 and in July 2011, he has taken steps to re-open the final decree proceedings in I.A.No.582 of 1982. Therefore, there is absolutely no delay on the part of the respondent for making the application and the learned Additional District Munsif, Padmanabhapuram, has also not committed any error while passing the order and the same has been passed only after taking into account the judgment and decree in S.A.No.1604 of 1984 as well as the subsequent order in C.R.P(MD) No.1527 of 2010. Therefore, no exception whatsoever can be taken to the said order under revision.

6.In fine, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

cp
To

The Additional District Munsif,
Padmanabhapuram.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-93350[F] dated 21/10/2019)

C.R.P. (NPD) (MD)No.1400 of 2012
and
M.P(MD) No.1 of 2012
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