

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4378 of 2015

and

M.P.No.1 of 2015

Joseph Jabaraj
Rep by Power of Attorney
J.Kirubakaran Marcus
S/o.Jagannathan Marcus Indian Christian
No.19 Kamalapuram Colony, Vinayagapuram,
Ambattur, Chennai – 53. Petitioner

Vs.

1.Ramesh Srinivasan
2.Jeevakumari alias Suganya Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Code of Civil Procedure, to set aside the order passed by the III Additional District Judge, Poonamallee in E.P.No.69 of 2013 in O.S.No.78 of 2012 dated 28.07.2015 and direct the Execution Court to attach and realize a sum of Rs.3,78,065.50 incurred by the petitioner towards the cost of the suit from and out of Rs.6,35,620/- deposited towards the suit account in O.S.No.78 of 2012.

For Petitioner : Mr.V.Srinivasa Babu

For Respondents : Mr.M.K.Nagarajan

ORDER

This Civil Revision Petition has been filed by the Petitioner /Decree holder against the dismissal of his Execution Petition in E.P.No.69 of 2013 in O.S.No.78 of 2012 on the file of the III Additional District Judge, Thiruvallur @ Poonamallee dated 28.07.2015.

2. The Petitioner herein has filed a suit in O.S.No.78 of 2012 on the file of the III Additional District Judge, Thiruvallur @ Poonamallee against the Respondent herein for the relief of specific performance of sale agreement dated 15.09.2011. The learned III Additional District Judge, Thiruvallur @ Poonamallee, by the Judgment and Decree dated 25.04.2013 had decreed the said suit as prayed for with cost and directed the petitioner herein to deposit the balance sale consideration of Rs.6,35,620/- before the Court within two weeks and thereafter the 1st Respondent/1st defendant has to execute the sale deed in respect of first item of the suit property in favour of the petitioner herein/degree holder within one month.

3.In pursuance of the said Decree, the petitioner herein had deposited the balance sale consideration of Rs.6,35,620/- before the said Court and thereafter, he filed an Execution Petition to direct the first respondent herein to execute the sale deed. But it appears that the first respondent did not come forward to execute the sale deed in pursuance of the decree and hence the executing Court itself had executed the sale deed in favour of the petitioner herein.

4.Thereafter, the petitioner herein had filed an execution petition in E.P.No.69 of 2013 in O.S.No.78 of 2012 seeking permission to collect the cost of Rs.3,78,065.50 from the amount which was already deposited by him before the Court towards sale consideration. The learned III Additional District Judge, Poonamallee by the order dated 28.07.2015 had dismissed the said execution petition. Feeling aggrieved, the petitioner/Decree holder has filed the present Civil Revision Petition.

5.Heard Mr.V.Srinivasa Babu, learned counsel for the petitioner and Mr.M.K.Nagarajan, learned counsel appearing for the Respondent.

6.The learned counsel for the petitioner has submitted that since the suit has been decreed with cost and also the Court had directed the petitioner to deposit the balance sale consideration of Rs.6,35,620/- before the Court, the petitioner had deposited the said amount within the stipulated time before the Court and thereafter, he filed an Execution Petition to direct the first Respondent herein to execute the sale deed. The first respondent did not come forward to execute the sale deed and hence the Court itself had executed the sale deed in favour of the petitioner/decreed holder. He further submitted that the amount of balance sale consideration of Rs.6,35,620/- which was deposited by the petitioner before the Court is still lying in the Court deposit.

7.He further submitted that as per the decree passed in O.S.No.78 of 2012, the petitioner is entitled to get the cost of Rs.3,78,065.50 from the defendant. Since the Respondents have not withdrawn the balance sale consideration from the Court, the petitioner is entitled to recover the cost from the amount which was already deposited before the Court, but the learned III Additional District Judge, Poonamallee erroneously had dismissed the said petition directing the petitioner to go for some other mode to realize the cost.

8.He further submitted that the approach of the learned III Additional District Judge is against the settled principles of law and therefore he prayed to allow the Civil Revision Petition and set aside the order passed by the III Additional District Judge, Poonamallee and allow the Execution Petition in E.P.No.69 of 2013 in O.S.No.78 of 2012 on the file of the III Additional District Judge.

9.Per contra, the learned counsel for the Respondent has submitted that the property is worth about more than one Crore, but the petitioner has knocked away the said property for throw away price. He further submitted that if at all the petitioner is having any right, he has to resort to some other mode for recovery of the suit cost and instead of that, he cannot request the Court to permit him to recover the amount already in court deposit.

10.He further submitted that the learned III Additional District Judge, Poonamallee taking into consideration the aforesaid facts has rightly dismissed the Execution Petition and in the said order this Court need not interfere. Therefore he prayed to dismiss the Civil Revision Petition.

11.A perusal of the typed set filed by the petitioner, shows that the petitioner had filed the suit in O.S.No.78 of 2012 on the file of the III Additional District Judge, Poonamallee for the relief of specific performance of the sale agreement said to have been executed by the 1st Respondent dated 15.09.2011. The learned III Additional District Judge, Poonamallee, after full trial, had decreed the said suit by the Judgment dated 25.04.2013 with cost and also directed the petitioner herein to deposit the balance sale consideration of Rs.6,35,620/- within two weeks and thereafter the first respondent herein has been directed to execute the sale deed in respect of the first item of the suit properties in favour of the petitioner herein within one month.

12.It appears that the petitioner herein had deposited the aforesaid balance sale consideration before the said Court within the stipulated time and thereafter he filed an Execution Petition to direct the first respondent herein to execute the sale deed. But it appears that the first respondent did not come forward to withdraw the aforesaid balance sale consideration and also to execute the sale deed and considering the same, the Executing Court itself had executed the sale deed in favour of the

petitioner herein/Decree holder. Thereafter, the petitioner/Decree holder had filed an Execution Petition in E.P.No.69 of 2013 for recovery of the suit cost of Rs.3,78,065.50.

13.In the said Execution Petition, he has stated that balance sale consideration which was deposited by him is lying in the Court deposit, and the same has not been withdrawn by the first respondent, and hence he requested the Court to permit him to recover the said cost from the aforesaid deposit.

14.The Executing Court had dismissed the said Execution petition by the impugned order stating that the petitioner has to recover the said cost by resorting to some other proceedings. Approach of the Executing Court is not proper. When there is no dispute with regard to the fact that the petitioner is entitled to recover the cost of Rs.3,78,065.50 and also there is no dispute that the balance sale consideration is lying in the court deposit and the same has not been withdrawn by the first respondent, the Executing Court should have allowed the execution petition and disbursed the cost to the petitioner instead of directing the petitioner to go for other mode of recovery. When law permits counter claim and

set- off, then there is no impediment to allow the said execution Petition. Petitioner asked only set-off. Therefore this Court is of the view that the impugned order passed by the Executing Court has to be set aside.

15.In the result, this Civil Revision Petition is allowed. The order passed by the Executing Court in E.P.No.69 of 2013 in O.S.No.78 of 2012 dated 28.07.2015 is set aside. The Executing Court is directed to permit the petitioner to withdraw the suit cost of Rs.3,78,065.50 from the deposit of balance sale consideration which is lying in the said Court. It is open to the first respondent to withdraw the balance amount, if any. No costs. Consequently, connected Miscellaneous Petition is closed.

15.10.2020

Internet : Yes/No
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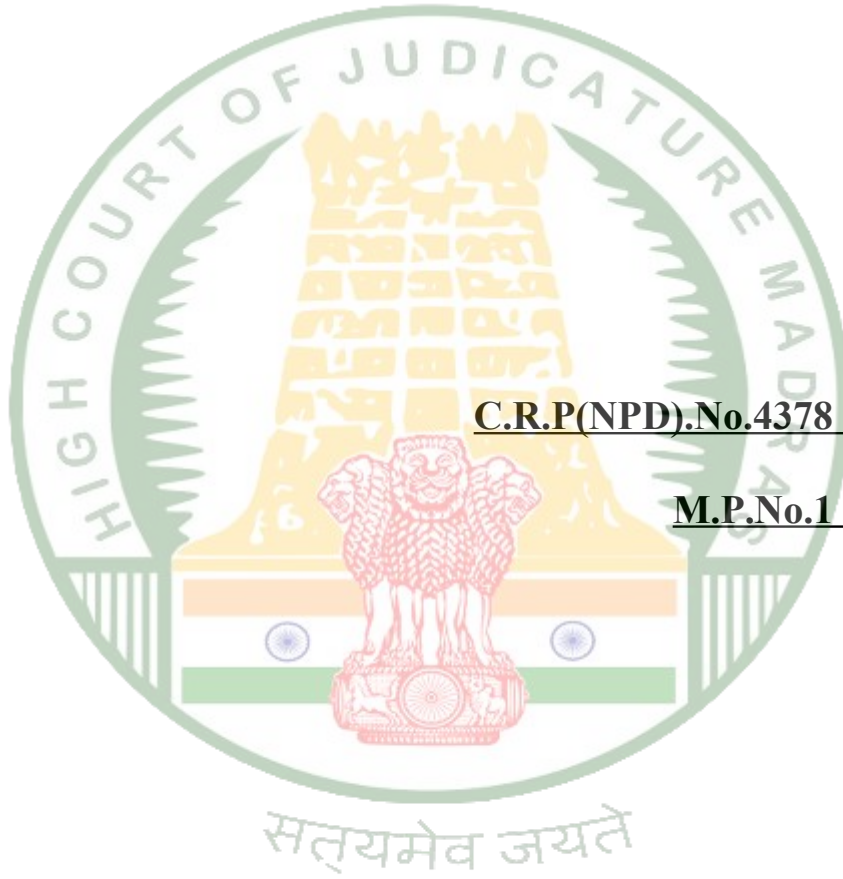
The III Additional District Judge,
Poonamallee.

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CRP (NPD).No.4378 of 2015

P.RAJAMANICKAM.J.,

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