

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No.1012 of 2020 and
CMP No.5557 of 2020

1. Ganesan
2. Kanniappan

..Petitioners

Vs.

N.Sekar

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.13249 of 2018 in O.S.No.1329 of 2015 by the IV Assistant City Civil Court, Chennai on 16.10.2019.

For Petitioners : Mr.R.Subramanian

For Respondent : Mr.V.Manoharan for Caveator
(sole respondent)

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.13249 of 2018 in O.S.No.1329 of 2015 by the IV Assistant City Civil Court, Chennai on 16.10.2019.

2. The petitioners herein are the defendants in the above said suit and the respondent herein has filed the suit seeking reliefs as mentioned below.

i) Declaration that the sale deed dated 24.01.1994 executed by the defendants 1 and 2 (present revision petitioners) in favour of one V.R.Subbaih Konar as null and void.

ii) Declaration that the order in CRP No.3866 of 2007 obtained by the defendants 1 and 2 by committing fraud upon the court as null and void.

iii) Declaration that the mortgage deed dated 09.10.2003 executed by the 5th defendant (R.Rajathilagam) in favour of 6th defendant (V.Vivekanandhan) as null and void.

iv) Mandatory direction to the defendants 1 and 2 (petitioners herein) to deliver vacant possession of the suit property and

v) Damages.

3. Pending suit, the petitioners herein filed a petition in I.A.No. 13249 of 2018 to reject the plaint and the same was dismissed by the Trial Court. Challenging the above said order, the present civil revision petition has been filed.

4. Heard the learned counsel appearing for the petitioners as well as the respondent. I have perused the materials on record.

5. On perusal of the records, it shows that earlier, a suit in O.S.No.7780 of 1989 was filed for partition, in which the present petitioners are the one of the defendants. The above said suit was decreed exparte. Thereafter, a petition in I.A.No.2297 of 1993 in O.S.No.7780 of 1989 was filed by the plaintiffs therein for passing final decree. In the final decree proceedings, the property mentioned in the suit schedule was brought on sale and the respondent herein was the successful bidder and he has also obtained a sale certificate in favour of him through court.

6. Thereafter, the respondent herein filed E.P.152 of 2005 for delivery of possession. Pending execution proceedings, the petitioners herein filed an application in E.A.No.4208 of 2005 under Section 47 of the Code of Civil Procedure, challenging the public auction conducted by the court below in the final decree proceedings, and the above said application was dismissed by the execution court. Therefore, the petitioners herein filed CRP No.3866 of 2007, against the orders passed by the execution court and it was allowed by this court vide order dated 13.12.2008, directing the executing court to follow the provisions contemplated under Sections 2 and 4 of the Partition Act and to dispose of the execution petition within a period of one month from the date of receipt of the order. Challenging the above said order, the respondent herein filed Special Leave Petition and the same was dismissed on 12.08.2013.

7. The learned counsel appearing for the petitioner submitted that, since the decision rendered by this court in the civil revision petition in CRP No. 3866 of 2007 dated 13.12.2008 become final, now the respondent cannot file the present suit in O.S.No.1329 of 2015 seeking the reliefs as stated. He also contended that, if the respondent is having any dispute over the title of the property, he can very well agitate the same before the Executing Court in the petition filed under Section

47 of the Code of Civil Procedure and not by filing a separate suit.

8. The learned counsel appearing for the petitioners also submitted that the petitioners filed a petition in E.A.No.4208 of 2005 in E.P.No.152 of 2005 before the execution court under Section 47 of the Code of Civil Procedure, contending that the mandatory provisions contemplated under the Partition Act have not been complied with and the dismissal order passed by the executing court in that petition was set aside by the High Court in CRPP No.3866 of 2007 and the same was confirmed by the Honourable Supreme Court, by dismissing the Special Leave Petition filed by the respondent. He therefore contended that, without complying with the directions passed by this court in the CRP No.3866 of 2007, the respondent is not entitled to file a separate suit.

9. He also drew the attention of this court to the plaint averments made by the respondent herein in O.S.No.1329 of 2016 and contended that the respondent can agitate all the plaint averments before the execution court in the petition filed under Section 47 of the Code of Civil Procedure and therefore, the present suit filed by the respondent is not maintainable and therefore, the same is liable to be rejected. According to him, the trial court lost his sight to consider all these facts and law and erroneously dismissed the petition, filed by the petitioners, to reject the plaint and hence, the civil revision petition may be allowed.

10. At this juncture, the learned counsel appearing for the respondent fairly conceded that the respondent will raise all the grounds raised in the suit, before the execution court. He also seeks permission of this court to file additional counter affidavit, if necessary, in the E.A.No.4208 of 2005 in E.P.No.152 of 2005 in O.S.No.7780 of 1989, filed under Section 47 of the Code of Civil Procedure. He also submitted that the respondent will not proceed further the suit in O.S.No.1329 of 2015 on the file of the IV Assistant Judge, City Civil Court, Chennai.

11. In view of the aforesaid submissions made by the learned counsel appearing for the petitioners as well as the respondent, this court is inclined to allow this civil revision petition with the following directions.

i) The orders passed by the Trial court in I.A.No.13249 of 2018 in O.S.No.1329 of 2015 dated 16.10.2019 is set aside.

ii) The respondent herein is at liberty to file additional counter affidavit in E.A.No.4208 of 2005 in E.P.No.152 of 2005 in O.S.No.7780 of 1989, within four weeks

from the date of receipt of the copy of this order.

iii) The executing court is directed to proceed with the application in E.A.No.4208 of 2005 in E.P.No.152 of 2005 in O.S.No.7780 of 1989 and dispose of the same, within three months from the date of receipt of a copy of this order, by taking note of the orders passed by this court in CRP No.3866 of 2007 on 13.12.2008.

12. With the above directions, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The IV Assistant City Civil Judge,
Chennai.

+1cc to Mr.V.Manoharan, Advocate, S.R.No.21073

+1cc to Mr.R.Subramanian, Advocate, S.R.No.20812

CRP (PD) No.1012 of 2020 and
CMP No.5557 of 2020

GMR (CO)
RN (27/05/2020)

WEB COPY