

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.2747 of 2018
& C.M.P.No.16136 of 2018

R.Balanchandran

.. Petitioner

Vs.

A.Jenix Dev Singh

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against fair and decreetal order passed in unnumbered E.A.Sr.No.1300 of 2018 in E.P.No.206 of 2017 on the file of the III Additional District Judge, Thiruvallur at Poonamallee dated 17.07.2018.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.I. David Singh
Caveater

ORDER

This Revision Petition is filed questioning an order of the Executing Court rejecting an Application filed under Order 21 Rule 58 of the Code of Civil Procedure, making a claim with reference to a property subject matter of a decree for specific performance on the ground that even in the suit for specific performance, the Court has concluded that the property belongs to the defendants therein.

2. The respondent herein filed a suit in OS No.144 of 2008 seeking specific performance of an agreement of sale entered into between him and the defendants therein on 22.01.2005.

3. The suit was resisted by the defendants raising various contentions.

4. The Trial Court decreed the suit on 09.06.2011. Aggrieved the

defendants in the suit for specific performance filed an Appeal in AS No.487 of 2011. The said Appeal came to be dismissed on 31.08.2017 by a Division Bench of this Court. After the disposal of the Appeal the plaintiff levied Execution in EP No.206 of 2017. Pending the said Execution Petition, the present application has been filed by the petitioner, who is a third party claiming that the suit property belongs to a firm called Pushpa Brick Works of which he is a partner and it was claimed that the defendants 1 and 2 in the suit for specific performance are not the owners of the property. This application was purportedly filed under Order 21 Rule 58 of the Code of Civil Procedure.

5. The learned Additional District Judge noted that this petition cannot be filed under Order 21 Rule 58, inasmuch as, there is no attachment of the property and Order 21 Rule 58 is confined to cases where a claim or objection is preferred to attachment of the property in execution of the decree. The learned Additional District Judge, however, held that quoting a wrong provision of law cannot be a bar to entertain the application. Not stopping there, the learned District Judge went on to examine the title

claimed by the petitioner. Referring to the judgment in AS No.487 of 2011, wherein two applications filed by the appellants therein in CMP Nos.14042 and 18473 of 2016 seeking to produce additional documents was rejected by the Division Bench, concluded that the Division Bench has decided that the first and second defendants were owners of the property in question and therefore, the same issue cannot be re-agitated in execution. On the said conclusion, the learned Executing Court rejected the Execution Application without even numbering it. Aggrieved, the petitioner has come up with this Revision Petition.

6. No doubt as against an order passed either under Order 21 Rule 58 or Order 21 Rule 97 to 100 of the Code of Civil Procedure, an Appeal alone would lie, since it is a case of rejection, this Revision Petition has been entertained by this Court. The sole basis on which the application was rejected by the Executing Court are the findings rendered by the Hon'ble Division Bench of this Court in AS No.487 of 2011. Unfortunately, the Executing Court had overlooked the fact that the petitioner was not a party to the Appeal and any finding rendered in the Appeal in his absence would

not bind him. The Application that was presented before the Executing Court, though termed as one under Order 21 Rule 58 of the Code of Civil Procedure, is effectively one under Order 21 Rule 97 to 100 of the Code of Civil Procedure made by a third party obstructing Execution of the Decree.

7. In terms of Order 21 Rule 101 of the Code of Civil Procedure, the Court dealing with the application under Rule 97 to 100 of Order 21 of the Code of Civil Procedure shall decide all questions (including questions relating to a right title or interest in the property arising between the parties to a proceeding). Therefore, it is clear that an application under Order 21 Rule 97 to 100 of the Code of Civil Procedure must be tried like a suit. The learned Additional District Judge was not therefore right in rejecting the application at the threshold by relying upon the findings rendered in the Appeal to which the petitioner before it was not a party. The Order of the Trial Court therefore suffers from material irregularity and if the same is allowed to stand would definitely occasion failure of justice.

8. In view of the same, the Civil Revision Petition is allowed, the order of the Trial Court is set aside, the application in EA SR No. 1300 of 2018 is directed to be restored to file under Order 21 Rule 97 and 99 of the Code of Civil Procedure and dealt with in terms of Order 21 Rule 97 to 101 of the Code of Civil Procedure. No costs. Consequently, the connected miscellaneous petition is closed.

23.07.2020

jv

Index: Yes/No

Internet: Ye/No

Speaking order/ Non speaking order

To

The III Additional District Judge, Thiruvallur
Poonamallee

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R.SUBRAMANIAN, J.

jv



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