

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2874 of 2018

&

C.M.P.No.16903 of 2018

and

C.R.P.No.1874 of 2016

&

C.M.P.Nos.20226 & 9811 of 2016

C.R.P.No.2874 of 2018

1. Muthammal
2. Sanmugasuntharam
3. Matheshwari
4. Senthamil Selvi
5. Thillaikkarasi
6. Sellathurai
7. Karnnan
8. Ramesh

....Petitioners

-Vs-

1. Muthammal
2. Srinivasan
3. Sathiya Narayanan
4. Padmavathi

... Respondents

C.R.P.No.1874 of 2016

1. Kamatchi
2. Muthammal,
W/o.Ramasamy

... Petitioners

-Vs-

1. Muthammal,
W/o. Late.Muthu Karuppan
2. Srinivasan
3. Sathiya Narayanan
4. Padmavathy

... Respondents

Prayer in C.R.P.No.2874 of 2018:

Civil Revision Petition filed under section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 01.08.2018 made in R.E.P.No.22 of 2013 in O.S.No.110 of 1981 on the file of the District Munsif, Rasipuram by allowing this Civil Revision Petition.

Prayer in C.R.P.No.1874 of 2016:

Civil Revision Petition filed under section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 14.07.2015 made in I.A.No.16 of 2014 in R.E.P.No.22 of 2013 in O.S.No.110 of 1981 on the file of the District Munsif, Rasipuram by allowing this Civil Revision Petition.

For Petitioners
in both cases : Mr.A.V.Arun

For Respondents
in both cases : Mr.R.Thirugnanam

COMMON ORDER

The legal representatives of the original Judgment Debtor who suffered a decree for specific performance in O.S.No.110 of 1981 have come up in this revision challenging the dismissal of an application filed by them under Section 47 of Code of Civil Procedure.

2. The suit in O.S.No.110 of 1981 was decreed for specific performance. The Judgment and decree was affirmed by this Court. Thereafter, the decree holder filed R.E.P.No.5 of 2008 seeking execution of Sale Deed. The execution petition was allowed and the sale deed was also executed. Thereafter, the respondents filed E.P.No.22 of 2013 seeking possession. Pending this execution petition, the petitioner filed an application under Section 47 of the Code of Civil Procedure contending that the respondent has not complied with the decree for specific performance since he has not deposited the sale consideration within the time granted under the decree and also contending that Section 50 of the Code of Civil Procedure has not been followed in seeking execution against the legal representatives.

3. This application was resisted by the respondents contending that the entire balance of sale consideration was deposited even earlier and out of the said sum, a sum of Rs.13,865/- was attached by another judgment creditor of the original defendant and the money was taken away. Therefore, there was a deficit of Rs.13,865/- in the Court deposit when the

Sale Deed was sought to be executed. It is only at that time by way of abundant caution, the respondent, Decree holder deposited the balance amount and thereafter the Sale Deed executed by the court. Therefore, according to the respondent Decree holder, there was no default in depositing the balance of sale consideration.

4. The learned trial Judge who heard the application concluded that the claim of the petitioners who are the legal representatives of the Judgment debtor regarding the deposit is incorrect. The said sum of Rs.13,865/-was deposited only to make good the deficit that occurred due to attachment of the amount by some other creditor. Legally, the respondent/decreed holder need not deposit the money. The money that was deposited by the respondent / decreed holder was attached by some other creditor of the Judgment Debtor, therefore technically speaking the money was taken by an another creditor of the Judgment Debtor as if it belonged to him.

5. Accepting the explanation offered by the respondents, the trial Court dismissed the application under Section 47 of the Code of Civil Procedure and ordered delivery. Aggrieved by the dismissal of the application under Section 47 of the Code of Civil Procedure and the order of delivery made in the execution petition, the petitioners have come up with the Civil Revision petitions in CRP No.1874 of 2016 and CRP.No.2874 of 2018.

6. I have heard Mr.A.V.Arun, learned counsel appearing for the petitioners and Mr.R.Thirugnanam for the respondents in both the revisions.

7. Mr.A.V.Arun, learned counsel appearing for the petitioners would vehemently contend that the order of the executing Court is against law. He would submit that once there is a deficit in the balance of sale consideration, the Court below was not right in directing execution of Sale Deed and delivery of possession. According to him, a purchaser in a suit for specific performance bound to pay the entire amount due under the sale agreement to the defendant vendor. If the entire amount is not paid, the defendant vendor is not liable to execute the sale deed or hand over possession of the property.

8. Admittedly, the entire balance amount of sale consideration was deposited into Court and a sum of Rs.13,865/- was attached by some other creditor of the vendor /Judgment debtor as if the money belonged to him. Once the balance of sale consideration in a suit for specific performance is deposited into Court, it belongs to the Vendor/Judgment Debtor. It forms part of the estate of the Judgment Debtor. Therefore, attachment of it by another creditor would be perfectly valid

and the decree holder in the suit for specific performance namely the purchaser need not even deposit any deficit caused by such attachment and withdrawal by a third party creditor. In Elumalai Vrs. Devi alias Perundevi and ors. reported in (1992) 1 MLJ 113, this Court had held that once the balance of Sale consideration deposited to the credit of the suit for specific performance, it becomes part of the estate of the Judgment debtor and any accretions thereto, will belong to the Judgment Debtor. If accretions would go to the Judgment Debtor, any deduction would also be on the account of the Judgment Debtor.

9. I therefore, do not find any illegality or irregularity in the order of the trial Court in dismissing the application under Section 47 of the Code of Civil Procedure. Therefore, the Civil Revision fails and it is accordingly dismissed.

10. In view of the dismissal of Civil Revision petition CRP No.1874 of 2016, CRP No.2874 of 2018 will also stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The District Munsif, Rasipuram.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+2cc to Mr.A.V.Arun, Advocate, Sr.Nos.26413 & 26414

C.R.P.No.2874 of 2018 &
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