

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.11.2020**

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) No.1499 of 2020

and

C.M.P.No.8854 of 2020

J.Aslam Basha

: Petitioner

Vs.

1.Vijayalakshmi
Manova (Deceased)

2.Masilamani

3.Sivaji

4.Rani

5.Yonath Kumar

6.Arun Kumar

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the judgment and decree of the learned Additional District Munsif, Vaniyambadi, in E.A.No.27 of 2014 in E.P.No.36 of 2011 in O.S.No.119 of 1996, dated 02.02.2015.

For Petitioner : Mr.V.Raghavachari

This Civil Revision Petition is directed against the order passed by the Executing Court dated 02.02.2015.

2. The revision petitioner herein is the *pendente lite* purchaser of the property. The first respondent is one of the co-sharers of the property. She filed a suit for partition on 10.12.1991 and the suit was decreed on 20.12.2010. Thereafter, she filed an execution petition for delivery of possession on 30.06.2011. During the pendency of the execution proceedings, the revision petitioner has purchased the property on 15.10.2012. On 27.11.2012 delivery of possession was made by the Amin and an endorsement was also made to that effect. At that stage, the revision petitioner filed two execution applications, one not to record delivery under Sections 141 and 151 of the Code of Civil Procedure and another under Order 21 Rules 98 to 102 of the Code of Civil Procedure. During trial, the revision petitioner examined himself as a witness, but, has not marked the original sale deed through which he purchased the property and also the originals of parent documents with regard to the property. The Trial Court, considering the bar imposed under Rules 98 to 102 of Order 21, that there is a bar for the *pendente lite* purchaser to resist or obstruct the possession and there is no provision preventing the Executing Court from recording delivery, dismissed the application filed by the revision petitioner on 02.02.2015. Even though it is not an appealable order, the revision petitioner preferred an appeal in the year 2015 and filed an Interlocutory Application for withdrawing the appeal on 19.12.2018 and the appeal was dismissed with liberty to file revision subject to limitation. Even though the order was passed on 10.01.2019, the present revision has been preferred only on 20.08.2020.

3. The learned counsel for the revision petitioner would vehemently contend that the property originally belonged to one Duraisamy, Sundaram, Manova and Lakshmanan, grandsons of Periyaanna. The legal heirs of Duraisamy and Lakshmanan executed a general power of attorney in favour of one Bala Sundar on 16.05.1989. The legal heirs of Sundaram and Manova executed a power of attorney in favour of Sivaji in the year 1989. On the strength of the power of attorney, agents sold the property to one Rizwana Athar on 16.10.1990. Thereafter, after several sale transactions, the revision petitioner purchased the property on 15.10.2012. The suit was instituted on 10.12.1991 long after the sale to Rizwana Athar. Therefore, the property is not the subject matter of family holding. Hence, the bar imposed under Order 21 Rules 98 to 102 will not apply to the case on hand and the Executing Court, without deciding whether the decree holder has any right or title to the property, dismissed the application. He would further contend that the finding of the Executing Court that the revision petitioner, being a lawyer, should have been very careful in complying with the principles of law, is also without jurisdiction and the Court should have exercised its power objectively, however, wrongly held that purchase is hit by *lis pendens*.

4. The learned counsel for the revision petitioner would also contend that the decree is a nullity for non-joinder of necessary parties and the purchasers prior to the institution of the suit were not at all made as parties and, therefore, the decree is inexecutable and delivery of possession shall not be recorded.

5. I have given my anxious consideration to the submissions made by the learned counsel for the revision petitioner.

6. At the outset, it is not denied that the revision petitioner is the *pendente lite* purchaser. Admittedly, the decree in the said suit was passed on 20.12.2010 and the execution petition was filed on 30.06.2011. During the pendency of the execution petition, the revision petitioner purchased the property on 15.10.2012. In fact, delivery was recorded on 27.11.2012 and thereafter, the revision petitioner has approached the Court under Order 21 Rules 98 to 102 of the Code of Civil Procedure. It is important to note that even though it was contended by the revision petitioner that the sale of the property had happened much prior to the institution of the suit by the decree holder, he has not chosen to file any document in original before the Court nor examined the power of attorney or the original purchasers. On the other hand, he examined only his immediate vendor and the *pendente lite* purchaser. It is pertinent to note that even though the first respondent has let in categorical evidence that she has not given any power of attorney, the revision petitioner has not chosen to cross-examine her.

7. It is well settled that the obstructor is entitled to prove his title and disprove the title of decree holder. It can be done either by producing the original title deeds, which confer title on the obstructor and by cross-examining the decree

holder, who claims title to the property. In the case at hand, the revision petitioner has drastically failed either to produce the original title deeds to the property through which he claims title or its parent documents or to cross-examine the decree holder who deposed as R.W.1. Apart from this, even though the order was passed on 02.02.2015, the revision petitioner, as a lawyer, who got knowledge that by virtue of amendment in the Code of Civil Procedure, only revision will be maintainable, has filed an appeal, in which also, he filed an application on 19.12.2018 seeking permission to withdraw the appeal and thereafter, kept quiet for sometime. Final orders were passed on 10.01.2019. Thereafter, he presented the revision only on 12.08.2020. There is no explanation for the delay in filing the revision. Even assuming that there is no limitation period prescribed under Article 227 of the Constitution of India, that will not entitle the revision petitioner to the delay in filing more than a period of 20 months. The Trial Court has rightly found that the revision petitioner has not pleaded that he purchased the property without knowledge and there is clear categorical evidence by the first respondent that the revision petitioner being a lawyer he attempts by way of fraud and also the close friend of power of attorney. In that event, burden of proof is on the revision petitioner to show that he is an innocent person. On the other hand, the evidence of R.W.1 goes unrefuted to the extent that the revision petitioner has purchased with full knowledge about the litigation pending before the Court. *Pendente lite* purchaser is barred from maintaining the above petition. That too, a purchaser with knowledge of the pendency of litigation is absolutely not entitled to any relief much less

equitable relief. The Executing Court has rightly come to a conclusion that the revision petitioner is not entitled to any relief. The order passed in 2015 is sought to be challenged in the year 2020 which by itself is a clear proof that it is an attempt by the revision petitioner to defeat the right of the decree holder from realizing the fruits of decree. The law makers have deliberated upon the transferee *pendente lite* and have incorporated the power under Rules 98 and 102 of Order 21. It is also to be noted that Sections 141 and 151 do not bar for recording of delivery of possession. Since delivery of possession was made in favour of the decree holder as early as on 27.11.2012, it can very well be recorded. If the revision petitioner claims to be in possession even after delivery, he will be treated as a trespasser/encroacher and he is not entitled to remain in possession illegally. Considering all these aspects, this Court is of the opinion that revision merits no consideration and accordingly, the same stands dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is closed.

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03.11.2020

Index: Yes/No

Internet: Yes/No

SML/TK

To

The Additional District Munsif Court,
Vaniyambadi.

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M.GOVINDARAJ, J.

SML/TK



Order made in
C.R.P.(NPD) No.1499 of 2020

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Dated: **03.11.2020**