

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No.1514 of 2020
and C.M.P.No.8909 of 2020

N.Santhamani

... Petitioner

Vs.

1. S.Ramakrishnan

2. R.Radha

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 03.02.2020 made in E.A.No.383 of 2011 in E.P.No.88 of 2009 in O.S.No.814 of 2003 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.N.Manoharan

ORDER

The present Civil Revision Petition is directed against the dismissal of the application filed by the third party under Section 47 read with Order XXI Rule 58 of Civil Procedure Code.

2. Originally, the property belonged to the husband of the petitioner and he had sold it in favour of the 2nd respondent-Judgment Debtor on 22.08.1997. The 2nd respondent entered into a sale agreement with the 1st respondent-Decree Holder on 24.12.1998. The 2nd respondent failed to perform her part of contract and hence, the 1st respondent filed a suit in O.S.No.814 of 2003 for specific performance and the same was decreed on 15.03.2005. Thereafter, on 25.10.2006, the petitioner's husband obtained a Power of Attorney from the Judgment Debtor and got the Sale Deed executed in her favour on 08.02.2007.

3. While the matter stood thus, on 27.11.2008, the Sale Deed was executed in favour of the 1st respondent through Court. The 1st respondent-Decree Holder filed an Execution Petition for possession vide E.P.No.88 of 2009, in which, the petitioner filed E.A.No.486 of 2009 under Order XXI Rule 97 of C.P.C. However, the said E.A.No.486 of 2009 was dismissed for default on 07.04.2011 and it is stated that they have filed an application for restoring the same and it is still pending. In the meanwhile, the petitioner has also filed a

suit in O.S.No.1161 of 2010 before the same Court for cancellation of the sale deed dated 27.11.2008 and the same is also pending. Thereafter, she filed an application under Order XXI Rule 58 of C.P.C. read with Section 47 in E.A.No.383 of 2011. The trial Court has considered the maintainability of the petition under Rule 58 of Order XXI & Section 47 C.P.C., and held that it is not maintainable. Further, it is held that transfer made after institution of the suit and after the decree passed in the suit for specific performance. The purchase is not bonafide and the pendente lite transfer is hit by Order XXI Rule 102 of C.P.C. It is also observed that the filing of the suit in O.S.No.1161 of 2010 and the present petition are collusive attempts of the petitioner and the 2nd respondent to protract the proceedings and ultimately dismissed the petition.

4. Admittedly, there was sale in the year 1997 and an agreement for sale in the year 1998. The 1st respondent filed a suit for specific performance and the same was also decreed on 15.03.2005. Thereafter, the 2nd respondent executed a Power of Attorney on 25.10.2006 and sale in favour of the petitioner on 08.02.2007. In other words, the petitioner having agreed to get the property reconveyed on discharging the debt, had kept quiet till the decree was passed and hastily got the sale deed after passing of decree. When an execution application was filed for possession, the petitioner has filed an

application under Order XXI Rule 97 C.P.C., but realised that it is not maintainable in view of Rule 101 Order XXI C.P.C., left it dismissed for default on 07.04.2011. She has filed a suit for cancellation of the sale deed, but had not pursued with the same. It is pending for the past 10 years before the same Court. While the matter stood thus, attempt to file an execution application under Section 47 read with Order XXI Rule 58 C.P.C., is not maintainable as it is barred in view of the fact that the property has already been sold. Therefore, the hasty conveyance after suffering a decree for specific performance and purchase bereft of details as to discharge of debt and verification of title, as rightly held by the trial Court, is not bonafide and the petition is not maintainable.

5. I do not find any infirmity in the order dated 03.02.2020 in E.A.No.383 of 2011 in E.P.No.88 of 2009 in O.S.No.814 of 2003 passed by the II Additional Subordinate Judge, Coimbatore. It is open to the petitioner to workout her remedy in O.S.No.1161 of 2010 which is pending on the same Court for cancellation of Sale Deed. Hence, the Civil Revision Petition is dismissed.

6. The learned counsel for the petitioner would request that a direction may be given to the trial Court to dispose of the suit in O.S.No.1161 of 2010 as expeditiously as possible. Accordingly, the II Additional Subordinate Judge, Coimbatore, is directed to dispose of the suit in O.S.No.1161 of 2010 as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.08.2020

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To

The II Additional Subordinate Judge,
Coimbatore.

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