

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)Nos. 742, 743 & 744 of 2018

and

C.M.P.Nos. 3782, 3783 & 3784 of 2018

C.R.P.NO. 742 of 2018

1.M.Sundaram

2.K.Sakthivel

...Petitioners

Vs.

1.K.Subramanian

2.Minor.Aparna

3.Minor.Rithika

4.R.Divya

5.Minor.Sugan

6.The Attur Town Co-operative Bank Ltd.,

No.94, rep. By its Secretary,

Attur, Salem Dist.

7.Sub-Registrar,

Thalaivasal,

Attur, Salem Dist.

...Respondents

Prayer in C.R.P.No. 742 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order 22.08.2017 in I.A.NO. 354 of 2016 in O.S.No. 229 of 2013 on the file of the II – Additional District Court, Salem.

C.R.P.NO. 743 of 2018

E.Senthil

...Petitioner

Vs.

- 1.Ramasamy
- 2.Jayasuriya
- 3.The Attur Town Co-operative Bank Ltd.,
No.94, rep. By its Secretary,
Attur, Salem District.
- 4.Sub-Registrar,
Thalaivasal,
Attur Taluk, Salem District.

...Respondents

Prayer in C.R.P.No. 743 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 17.11.2017 in I.A.No. 396 of 2016 in O.S.No. 204 of 2011 on the file of the II – Additional District Court, Salem.

C.R.P.NO. 744 of 2018

S.Narmadha

...Petitioner

Vs.

- 1.Ramasamy
- 2.Jayasuriya
- 3.The Attur Town Co-Operative Bank Ltd.,
No.94, rep. By its Secretary,
Attur, Salem District.
- 4.Sub-Registrar,
Thalaivasal, Attur Taluk,
Salem District.

...Respondents

For Petitioners in all CRPs' : Mr.T.R.Rajagopalan, Senior Counsel
for Mrs.Veena Suresh

For Respondents : Mr.K.Selvaraju for R1 to R5 in
CRP.No. 742 of 2018
: Mr.P.Jagadeeshan for R1 & R2 in
C.R.P.Nos.743 &744 of 2018
: Mr.A.Murugan for Mr.A.Radhakrishnan
for R6 in
CRP.No. 742 of 2018 and for R3
in CRP.Nos. 743 & 744 of 2018
: Mr.T.N.Pappiah, AGP for R7 in
CRP.No. 742 of 2018 and R1 in
CRP.Nos. 743 & 744 of 2018

COMMON ORDER

These revisions are at the instance of the plaintiffs in three suits
for specific performance in O.S.Nos. 204 & 205 of 2011 and 229 of 2013 on
the file of the II – Additional District Court, Salem.

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2. The petitioners in these revisions as plaintiffs sued for specific
performance of agreements of sale dated 29.01.2010 and 21.06.2010.

During the pendency of the suit, it came to light that the properties subject matter of the suits were sold in an auction conducted by the 6th respondent / Co-operative Bank in execution of an award by Deputy Registrar of Co-operative Societies. The Bank itself had purchased the properties during the auction held in the year 2008. The plaintiffs would claim that the judgment debtors namely, the defendants in the suit / agreement vendors had utilised the monies received as advance under the sale agreements and also the monies borrowed from the plaintiffs to pay the debt due to the Co-operative Bank. In such circumstances, since the auction sale was not set aside and title had vested in the Co-operative Bank namely, the 6th respondent, the plaintiffs sought for impleading the Co-operative Bank / 6th respondent and Sub-Registrar, Thalavivasal as defendants in the suit.

3. The said applications were resisted by the defendants in the suit as well as the proposed parties. The learned Trial Judge concluded that since the title had passed even prior to the agreement and no relief has been sought for against the proposed parties, the applications under Order 1 Rule 10(2) cannot be allowed. On the said finding, the learned Trial Judge

dismissed the applications.

4. I have heard Mr.T.R.Rajagopalan, learned Senior Counsel for Mrs.Veena Suresh for the petitioners, Mr.K.Selvaraj, learned counsel for the respondents 1 to 5 in C.R.P.NO. 742 of 2018 and Mr.P.Jagadeesan, learned counsel for Respondents 1 and 2 in C.R.P.Nos. 743 & 744 of 2018, Mr.Murugan for Mr.A.Radhakrishnan for 6th Respondent in C.R.P.No. 742 of 2018 and 3rd respondent in C.R.P.Nos. 743 & 744 of 2018. Mr.T.M.Pappiah, learned Additional Government Pleader for 7th respondent in C.R.P.No. 742 and 4th respondent in C.R.P.Nos. 743 and 744 of 2018.

5. Mr.T.R.Rajagopalan, learned Senior Counsel for the petitioners would vehemently contend that in view of the subsequent revaluations regarding the sale of the property in execution of an award passed by the District Registrar and vesting the title in the Co-operative Bank, it is necessary that the Co-operative Bank must be made a party to the present suit in as much as, there is no dispute that the entire amount payable to the Bank has been paid and debt has been discharged. All that remains is only

re-conveyance to be made by the Bank in favour of the defendants. According to him, having suppressed the sale, the defendants cannot be allowed to take advantage of the non-impleading of the Bank and have the suit dismissed.

6. Contending contra, M/s.P.Jagadeesan and Mr.K.Selvaraj would submit that the very agreement is in dispute unless it is shown that the Bank is a proper or a necessary party, it cannot be impleaded. They have also raised the point of limitation. Mr.A.Murugan, learned counsel for the Bank would submit that unless the sale certificate is cancelled the plaintiffs can not claim Specific performance. The proper authority to cancel the sale certificate is Deputy Registrar of Cooperative Societies. Therefore, the Bank is not a necessary party. I have considered the rival submissions.

7. No doubt, the execution of the agreement is in dispute, the same has to be decided after trial. The fact that the properties were sold in an auction conducted by the Co-operative Bank, pursuant to an award is not in dispute. It is also not in dispute that the entire amount payable to the

Bank has been paid. It is the contention of the petitioners that the debt has been discharged from the amounts collected from them. The respondents contend otherwise, even this question has to be decided only after evidence is let in. The Bank had admitted that the entire amount due under the award has been paid and it has also issued a no dues certificate. The Bank cannot take a technical plea that it is for the Deputy Registrar to cancel the sale. Having received the entire amount even after the sale, it is for the Bank to take steps to have the sale certificate cancelled. The Bank cannot take advantage of its own failure to get the sale certificate cancelled. The defendants have received the entire amount even during the year 2011. It is because of the non-cancellation of the sale certificate, the title to the suit properties now resides with the Bank, therefore, the Bank is the necessary party to the suit.

9. A Division Bench of this Court in **AIR 1956 Mad 75** has held where there is a subsequent alienation of the property subject matter of the agreement, the subsequent purchaser would be a necessary party to the suit and the proper form of the decree would be to direct the purchaser to join

execution of the sale deed so as to transfer the title that resides in him/her to the decree holder.

10. The said principle would be equally apply to the case on hand, since the Bank though holds title, has received the entire amount due under the decree and there is no justification for the conduct of the bank in refusing to transfer title by seeking cancellation of the sale certificate. The plaintiffs would be justified in requesting the Court to grant a decree directing the Bank to execute the sale deed directly in their favour so that the title to the property gets transferred directly to the plaintiff in the event, they succeed in the suit for specific performance.

11. I therefore, find that the Trial Court was not right in dismissing the applications for impleading. The Trial Court has gone on to dismissing the applications merely on the ground that no relief has been sought for against the Bank. It is open to the plaintiff to amend the plaint taking into account, the subsequent events that occurred, after impleading of the parties. All these revisions are allowed, the interlocutory applications in

I.A.No.354 of 2016 in O.S.NO. 229 of 2013, I.A.NO. 397 of 2016 in O.S.NO. 205 of 2011 and I.A.No. 396 of 2016 in O.S.No. 204 of 2011 will stand allowed. Consequently, connected miscellaneous petitions are closed. No costs. The plaintiffs shall take steps to amend the plaint as required by the Code.

10.12.2020

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Internet:Yes
Index:No
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To:

The II – Additional District Court,
Salem.



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R.SUBRAMANIAN, J.

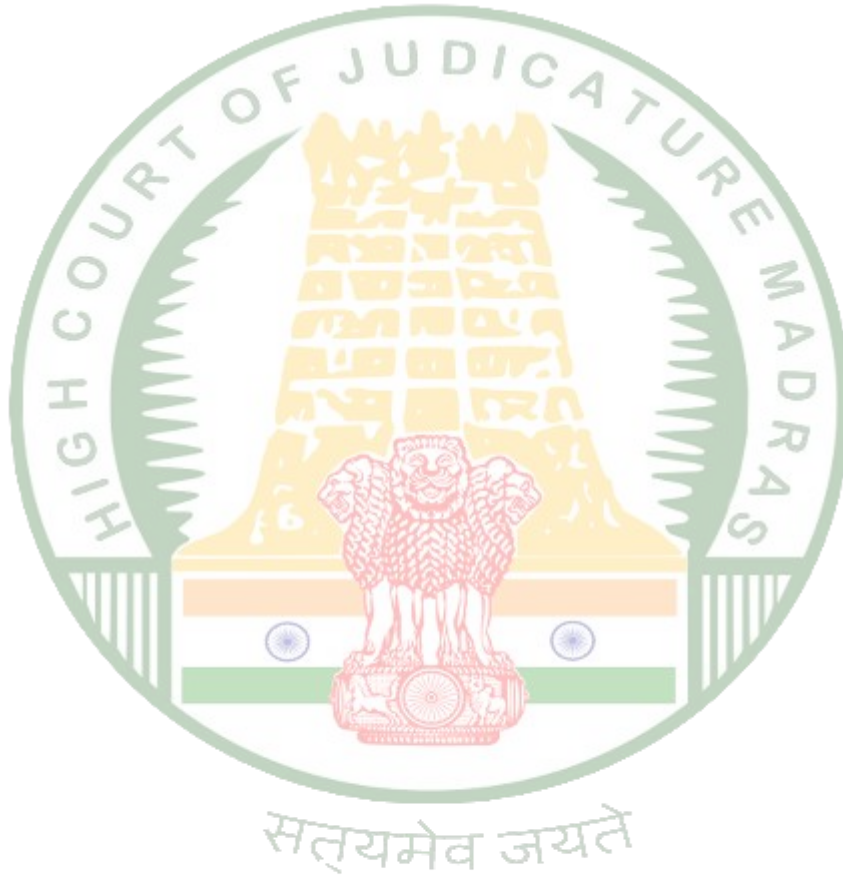
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