

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

C O R A M

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

C.R.P.No.4823 of 2017
and C.M.P.No. 22805 of 2017

Papathi

...Petitioner

Vs

Ponnusamy

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 20.07.2017 passed in E.A.No.80 of 2010 in E.P.No.20 of 2010 in O.S.No.30 of 1999 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : S.Kumaresan

J U D G M E N T

The present Civil Revision Petition has been filed challenging the order dated 20.07.2017 passed in E.A.No.80 of 2010.

2. The learned District Munsif, Palladam has dismissed E.A.No.80 of 2010 filed by the petitioner herein on the ground that, there is no time limit prescribed to deposit the balance sale consideration and that, the contention of the petitioner that E.P.No.20 of 2010 is barred by limitation is not an acceptable one.

3. Heard the learned counsel appearing for the respective parties.

4. The learned District Munsif, Palladam has not dealt with the matter in a proper perspective while dismissing the petition. If Clause Nos.1 and 2 are read together, the time limit will have to run as per the agreement, from the date of the judgment and decree dated 29.04.1999 passed by the District Munsif, Palladam.

5. In this case, admittedly in E.P.No.20 of 2010, it has been stated by the respondent that, the balance sale consideration of Rs.2,000/- was deposited on 31.03.2010 and the amount already paid was cancelled, as challan was misplaced and once again a sum of Rs.2,000/- was paid.

6. The contention that, no time limit has been prescribed and that it was open to the parties to deposit the amount at any time, cannot be accepted, since as per the terms of the decree dated 29.04.1999, the defendant was specifically granted three months time to execute the Sale Deed as per Clause 1, i.e after receiving balance sale consideration of Rs.2,000/- from the plaintiff, as per the sale agreement, dated 25.02.1998. Therefore, it is incumbent upon the plaintiff to deposit the amount as per the sale agreement, dated 25.02.1998 and in view of the Clause 2 of the decree dated 29.04.1999, the defendant has to execute the sale deed, after receiving the balance sale consideration of Rs.2,000/-.

7. Admittedly, the plaintiff has not paid the balance sale consideration of Rs.2,000/- within the stipulated period in terms of the Agreement and there is no justification to deposit the balance consideration after a period of ten years.

8. As rightly contended by the learned counsel for the petitioner that, Executing Court has no power to amend the decree, and therefore, amendment of the decree by the Executing Court itself is barred in law. Therefore when Clauses 1 and 2 of the sale agreement are read together in the light of the decree dated 29.04.1999 passed by the Court below, there is time limit both on the part of the plaintiff and the defendant to comply with the terms of the Agreement.

9. I find considerable force in the averments of the learned counsel for the petitioner. Hence, the civil revision petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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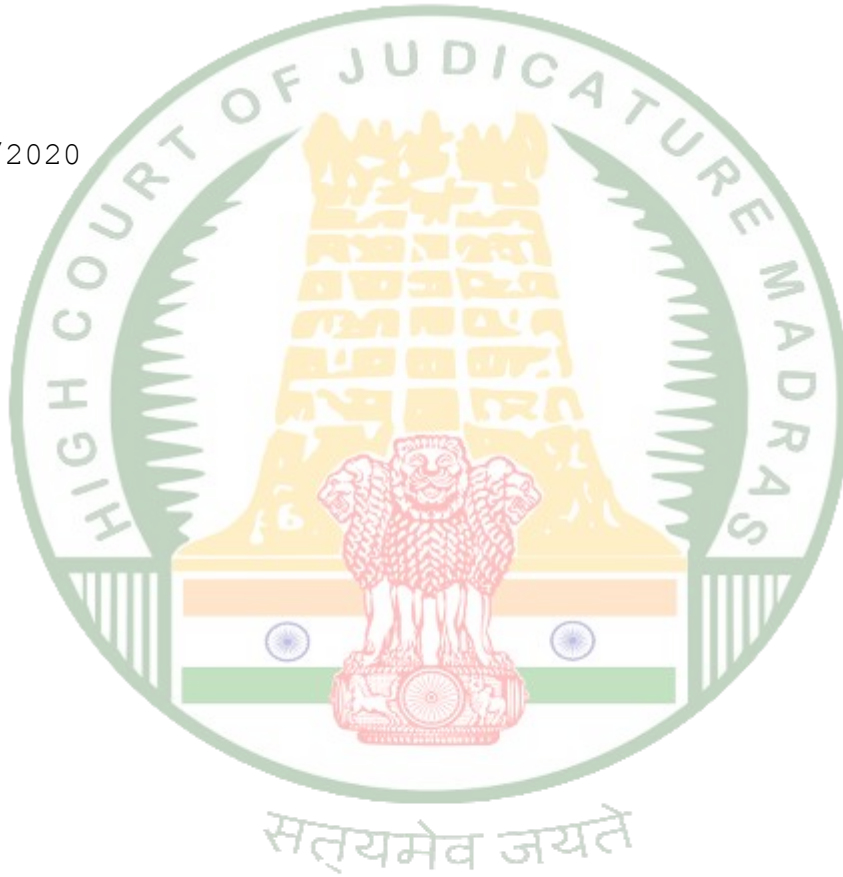
The District Munsif Court,
Palladam.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.19907

+1cc to Mr.S.Kumaresan, Advocate, S.R.No.19610

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KKV/17/07/2020



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