

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2020

Judgment Pronounced on : 19.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.2895 of 2014

and

M.P.No.1 of 2014

Karuppanna Gounder

.. Petitioner / Petitioner/
Decree Holder / Plaintiff

Vs.

1.K.Manian

2.Divya

3.K.Chinnasamy

4.V.Chenniyappa Gounder

5.K.A.Sivasambu

6.M.Palanisamy

.. Respondents/ Respondents/

Judgment Debtors/Defendants

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Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair order and decretal order dated 28.04.2014 in E.P.No.174 of 2012 in O.S.No.812 of 2002 on the file of the

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I-Additional Sub Court, Erode.

For Petitioner : Mr.N.Manokaran
For Respondent No.5 : Mr.I.C.Vasudevan
For Respondent Nos.1 to 4 & 6 : No appearance

ORDER

The plaintiff, who is the Decree Holder is the revision petitioner herein. The revision petitioner filed a petition under Order 21 Rule 35 of C.P.C., for delivery of possession of the suit property as per the specific performance decree and sale deed executed by the Court and the same was rejected. Hence this revision petition.

2. Brief facts of the case are as under:

The petitioner filed the suit in O.S.No.No.812 of 2002 for specific performance and the suit has been decreed on 16.06.2008. The E.P.17 of 2009 has been filed and the sale deed has been executed by the Execution Court and subsequent of the execution of sale deed, the present E.P.174 of 2012 has been filed by the petitioner for delivery of possession. The respondents 1 to 4 herein are set exparte before the trial Court/Execution Court.

3. Brief averments made in the counter statement filed by the contesting fifth respondent in a nutshell are as follows:

This respondent has filed a suit in O.S.No.615 of 2000 on the file of the learned Principal Subordinate Judge, Erode, to realize the money due of Rs.2,00,000/- against the first respondent, who is the defendant in the said suit and this respondent has filed a petition for attachment of immovable property belonging the respondents in I.A.No.914 of 2000 in O.S.No.615 of 2000 and the said petition was allowed on 04.10.2000 and the property situated in R.S.Nos.152/2, 152/3, 153/1, 153/4, 155/6, 155/7, 159/14 of Kangapuram village, Erode was attached. The said attachment is also registered as an encumbrance in the register of Sub Registrar of Perundurai. The attachment has not been raised till this day. The first respondent requested this respondent to find out possible means to settle the amount due in the suit in O.S.No.615 of 2000. Therefore, this respondent and the first respondent had talks in the presence of R.Manickasundaram. It was agreed that as the first respondent was not in a position to pay off the amount due in the suit, he came forward to sell the suit property viz., 20 cents in R.S.Nos.155/6 and 155/7 of Kangapuram Village, Erode Taluk and

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following his acceptance, the first respondent conveyed the said property in favour of this respondent for Rs.30,500/- and the same was registered as D.No.447/2004 in the Sub Registrar Office of Perundurai. The attachment of the property mentioned in this EP has already been made earlier before the filing of the present suit in O.S.No.812 of 2002 and sale has been made in E.P.103 of 2008 and subsequent to the said EP, the E.P.53 of 2010 has been filed by one T.M.Chinnasamy and delivery has been ordered and delivery has been recorded, while so, again filing this EP for delivery of the same property, which is covered under E.P.52 of 2010 in E.P.103 of 2008 in O.S.No.81 of 2003.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the fifth respondent and perused the records.

5. The learned counsel appearing for the revision petitioner would submit that in respect of the very same property, the first defendant, namely, K.Manian, appears to have entered into an agreement of sale on 05.02.2002 and after filing written statement, he has not entered appearance in the said suit and hence the suit was decreed exparte on 11.12.2002 and EP was filed.

In the said E.P.103 of 2008, sale deed was executed through Court on 22.01.2010. Thereafter, for taking possession, E.P.53 of 2010 was filed and possession was delivered through Court. He further contended that the Suit sale agreement in O.S.No.81 of 2003 is subsequent to the suit sale agreement in this Suit viz., O.S.No.812 of 2002, dated 15.02.1999. Since, the petitioner is the Decree Holder prior in point of time and the suit is also filed in the year 2002, the trial Court, without going to decide as to whether the subsequent involuntary sale and Court auction sale under Section 52 of the Transfer of Property Act, has dismissed the EP and he has also relied upon the following judgments:

(i) **1969(2)SCC 787** (Kedar Nath Lal and another vs. Ganesh Ram and others)

(ii) **1972 (2) SCR 18: AIR 1967 SC 140** (Niren De, Addl. Solicitor General, N.R.Basu and E.Udayaratnam)

(iii) **1972 (2) SCC 200** (Jayaram Mudaliar vs Ayyaswami and Others)

(iv) **1962 (75) LW 632** (Annamalai Mudaliar vs. Kuppuswami Reddiar)

(v) **1989 (1) LW 207** (Sambanda Mudaliar vs. Muthuswami

Mudaliar)

(vi)**2002 (1) MLJ 561**(K.Selvam vs. Visalam Chit Fund Limited, Srivilliputhur, represented by its Branch Manager and others)

6. The learned counsel appearing for the fifth respondent would contend that originally, even before filing of the suit in O.S.No.812 of 2002, the fifth respondent viz., Sivasambu has filed O.S.No.615 of 2000, before the learned Principal Subordinate Judge, Erode, to realize the money due of Rs.2,00,000/- against the first respondent, who is the defendant in the said suit and the respondents therein have filed an application in I.A.No.914 of 2000 in O.S.No.615 of 2000 for attachment of immovable property belonging to them and the same was allowed on 04.10.2000 and the property situated in R.S.Nos.152/2, 152/3, 153/1, 153/4, 155/6, 155/7, 159/14 of Kangapuram village, Erode was attached. Subsequently, the first respondent therein had sold 20 cents in full settlement of the decree amount and the same was recorded and the execution has been closed. Hence, 20 cents of land purchased by the fifth respondent herein is not forming part of the suit Sale agreement, dated 15.02.1999 and therefore, his 20 cents cannot be subjected to the possession in E.P.174 of 2012.

7. The learned counsel for the fifth respondent further stated that since one T.M.Chinnasamy has filed specific performance suit in respect of sale agreement dated 05.02.2001 and obtained an exparte decree against the respondents 1 and 2 therein on 07.02.2002 and took possession in E.P.53 of 2010. He has filed a separate suit in O.S.No.506 of 2011 against the said T.M.Chinnasamy, and obtained a decree, wherein, 20 cents purchased by the fifth respondent herein was excluded and therefore, prayed that his 20 cents, title and possession to be excluded from the purview of the suit in O.S.No.812 of 2002.

8. After hearing the rival submissions of both the parties and also the documents produced before the Execution Court covering 3 suits, it is seen that,

(i) the Revision Petitioner/Decree Holder has filed the suit in O.S.No.812 of 2002 for the relief of specific performance based upon Suit sale agreement dated 15.02.1999 and as the defendant has not come forward to execute the sale deed and the said suit was filed on 19.08.2002 in respect of 1 acre 33 1/3 cents, out of total extent of 2 acres, on the northern side of

Rs.No.155/6.

(ii) in the said Suit, the first respondent, namely, K.Manian has filed written statement the suit was allowed and an exparte decree was passed on 16.06.2008.

(iii) Thereafter, E.P.17 of 2009 was filed and the Court has executed the Sale Deed in favour of the petitioner/plaintiff on 07.08.2012. Thereafter, E.P.174 of 2012 was filed for delivery of possession, in which, the trial Court has observed that since, the property was already sold through Court in connection with E.P.53 of 2010 observing so, and dismissed the said EP.174 of 2012.

9. It is seen from the records that the revision petitioner/Decree Holder in O.S.No.812 of 2002 has obtained an exparte decree for specific performance on 16.06.2008. Another one T.M.Chinnasamy has filed a suit in O.S.No.81 of 2003 and obtained Sale Deed through Court also taken the possession of the suit property in E.P.103 of 2008. The fifth respondent has also obtained a decree in O.S.No.615 of 2000 filed by him against the land owner wherein a compromise was entered and thereby 20 cents were given as full and final settlement. For better appreciation of the three legal suits,

the contesting fifth respondent filed a suit in O.S.No.615 of 2000 for recovery of money based on pro-note against the first respondent/land owner and by an order of attachment under Order 38 Rule 4 of C.P.C., attachment before judgment was ordered in I.A.914 of 2000 on 04.10.2000 and the same was made entry in the encumbrance certificate before the Sub Registrar, Erode and attachment still in force. In view of the compromise entered between the respondents 1 and 2/land owners, 20 cents in R.S.Nos.155/6 and 155/7, a sale deed was executed by the respondents 1 and 2 to the fifth respondent herein on 16.02.2004.

10. The second suit was filed by the present revision petitioner/Decree Holder in O.S.No.812 of 2002 for specific performance of unregistered sale agreement with the first respondent on 15.02.1999 and the suit was filed on 19.08.2002.

11. The third suit was filed in O.S.No.81 of 2003 by the said T.M.Chinnasamy against the very same land owners for specific performance of unregistered sale agreement dated 05.02.2001. The said suit was filed in the year 2013 and an exparte decree was obtained on 9/16

11.12.2003 as stated supra, the present revision petitioner who obtained the exparte decree on 16.06.2008 filed E.P.17 of 2009 for execution of sale deed and E.P.174 of 2012 for delivery of possession. The said EP was dismissed and hence the Civil Revision Petition.

12. It is to be stated that in the suit filed by the said T.M.Chinnasamy against the very same land owners in O.S.No.81 of 2003, the trial Court has executed a sale deed in his favour in E.P.103 of 2008 on 22.01.2010 only. In other words, the sale deed executed by the Court in favour of T.M.Chinnasamy under E.P.103 of 2008 appears to be obtained by suppression of the material facts that even as early as on 06.02.2004, 20 cents in the said R.S.155/6 and 155/7 were sold by the landlord and suppressing the sale it appears that said T.M.Chinnasamy has obtained the sale deed through the Court. However, he also taken delivery of possession in E.P.53 of 2010 on 19.07.2010 and hence it transpires that the fifth respondent herein filed O.S.No.566 of 2011 against T.M.Chinnasamy and original land owners to declare that the said sale deed does not binding upon him in respect of 20 cents of land, which was already sold. After contest, the said suit was decreed in favour of the fifth respondent herein on 10/16

14.07.2014 assumes significance.

13. From the various dates and the events connecting with the three suits as extracted above in respect of 20 cents in R.S.155/6 and 155/7 by the respondents 1 and 2 (original land owners) in favour of the fifth respondent as a full settlement of the suit claim was registered as well as on 16.02.2004 and there is an order of attachment in I.A.914 of 2000 as early as on 04.10.2000. While this being the position, this Court wonders how the Sub Court has executed a sale deed in favour of this revision petitioner in E.P.17 of 2009 appears to have been obtained by suppression of material facts, namely, the Court sale deed dated 14.02.2004.

14. Yet another point is that the revision petitioner filed O.S.No.812 of 2002 for specific performance of the suit sale agreement dated 15.02.1999. The original owners respondents 1 and 2 herein(defendants 1 and 2) have filed a written statement. The first defendant has raised plea that he never executed any written agreement in favour of the plaintiff. The defendants have no necessity to sell the suit property in his favour. The plaintiff issued a notice. The plaintiff, attestors and scribe have colluded

together and forged the agreement. The second defendant filed written statement that the first defendant, namely, K.Manian is the father of the defendant become a drunken and gambler and he lead a way ward life. This defendant and his mother were driven away by the first defendant from the matrimonial home and they are now residing at Muthampalayam, Kavundaichipalayam (Post), Vellode (via) along with parents of this defendant's mother. The alleged suit agreement is forged and manipulated by the plaintiff and the first defendant. The plaintiff and the first defendant colluded together and created the suit agreement with the intention to defeat the rights of this defendant in the suit property.

15. After filing the written submission, he remained exparte. The very same fifth respondent was arrived as fifth defendant in the suit and filed statement in the execution proceedings in E.P.174 of 2012.

16. This Court finds that the sale deed in favour of the contesting fifth respondent is well prior in time. The same is in pursuant to the order of attachment made on 04.10.2000 and hence this property cannot be given delivery and in pursuance of the other decree obtained by him against

T.M.Chinnasamy, the same was excluded. As per Section 64(1) of C.P.C., wherein it has been made, any private transfer or delivery of property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other money contrary to such attachment, shall be void as against all claims enforceable under the attachment and Section 64(2) which protects the transfer if made or delivery entered in to and registered before attachment.

17. I find that the decree in O.S.No.812 of 2002 is a friendly decree. The remaining portion of the property that are covered under O.S.No.81 of 2003 wherein sale deed for execution of the Court in E.P.103 of 2008 on 22.11.2010 and delivery was granted on 19.07.2010. While observing this, the trial Court has rightly come to the conclusion that since the land in question was subjected to the order of attachment in the EP filed by the fifth respondent herein and the sale is also effected on 16.02.2004 and balance of the land which covers under E.P.53 of 2010 in favour of T.M.Chinnasamy and delivery has also been ordered through the Court and hence has rightly rejected the case of the petitioner and hence, I find no reason to interfere with the order accordingly, the revision fails.

18. The sale deed executed by the Court in E.P.17 of 2009 appears to have been obtained by suppression of material facts with regard to the two other sale deeds already been effected one much prior to the decree in pursuance of an order of attachment made as early as on 2000. It remains to be stated that the present specific performance suit by the petitioner is filed only in the year 2002. Furthermore, if a suit has been filed for specific performance of sale agreement, the parties has to file encumbrance certificate to that effect along with the plaint, so also, when the Decree Holder files execution for execution of the sale deed by the Judgment Debtor, in default, by the Court, they are supposed to file copies of encumbrance certificate to indicate whether any sale has been effected or not as recorded under the annexure 3 of C.P.C. If they filed such encumbrance certificate at the time of the execution petition for sale deed, the trial Court and executing Court could have been in a position to appreciate whether there was already an order of sale deed or delivery of possession by the Court or not. In the instant case, it appears no such encumbrance certificate has been filed in E.P.17 of 2000 for execution of sale deed through Court and hence seeing from any angle, this Court finds that there is a suppression of material facts even for getting the sale deed

from the Court. Considering the entirety of the circumstances and also taking note of the discussion in the preceding paragraphs, this Court is of the view that the revisional jurisdiction cannot be exercise to interfere with the sale considering order falsified executing Court. In this view of the matter, all the contentions of the learned counsel for the revision petitioner stands negative.

19. In the result, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

19.06.2020

Index : Yes/No
Internet: Yes/No

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To

1. The I-Additional Sub Judge,
Erode.

2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

C.R.P.(NPD)No.2895 of 2014

RMT.TEEKARAMAN, J.

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**Pre-delivery
Order made in
C.R.P.(NPD)No.2895 of 2014**

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