



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.06.2020

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P(MD) No.500 of 2020

and

C.M.P(MD)No.3138 of 2020

1.Periya Essaki Muthu
2.Chinna Essaki Muthu
3.Karpakavalli
4.Essakiammal

... Petitioners/Petitioners/
Respondents/Defendants

Vs.

Shajahan

...Respondent/Respondent
Petitioner/Plaintiff

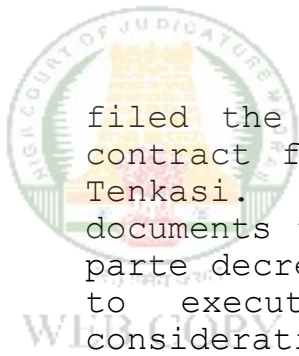
PRAYER: The Civil Revision Petition is filed under Section 115 of C.P.C against the fair order and decreetal order passed in E.A.No.1 of 2020 in E.P. No. 17 of 2013 in O.S.No.28 of 2013 dated 05.03.2020 on the file of the Principal Sub-Judge, Tenkasi.

For Petitioners : Mr.Balamohan Thambi

O R D E R

This Civil Revision Petition has been filed by the petitioners/defendants against the fair order and decreetal order passed in E.A.No.1 of 2020 in E.P. No. 17 of 2013 in O.S.No.28 of 2013 dated 05.03.2020 on the file of the Principal Sub-Judge, Tenkasi. The respondent herein is the plaintiff in O.S.No.28 of 2003.

2. According to the plaintiff, a sale agreement was entered into between the plaintiff and the father of the defendants on 20.08.1998. On that day itself, the father of the defendants handed over the document dated 22.01.1981 to the plaintiff. As per agreement, total sale consideration was Rs.1,00,00/-. During agreement period, the father of the defendants received Rs.90,000/-. It is agreed that remaining amount of Rs.10,000/- should be paid on or before 20.11.1999 and in the event of payment of Rs.10,000/-, sale deed should be executed in favour of the plaintiff. Though the plaintiff was willing to act as per the agreement, the father of the defendants did not co-operate. While so, he died in the year 2002. After his demise, the defendants were also not willing to execute a sale deed. Hence, the plaintiff has



filed the suit in O.S.No.28 of 2013 for specific performance of contract for sale before the learned Principal Subordinate Judge, Tenkasi. The plaintiff was examined himself as P.W.1 and 7 documents were produced as Ex.P.1 to Ex.P.7. On 28.03.2003, an ex-parte decree was passed. The trial court has directed the defendants to execute a sale deed on receiving the remaining sale consideration, within a period of one month.

3. The plaintiff filed an Execution Petition in E.P.No.17 of 2013. The defendants have filed their counter. After hearing the arguments on either side and perusing the materials, the learned Principal Subordinate Judge, Tenkasi, has allowed the Execution Petition on 13.03.2015. Challenging the said order, the defendants have filed C.R.P(MD)No.1639 of 2015 before this Court. By its order dated 26.09.2019, this Court has allowed the Civil Revision Petition and set aside the order passed in E.P.No.17 of 2013. Further, this Court remanded the matter and directed the Principal Sub Judge, Tenkasi, to hear E.P.No.17 of 2013 in O.S.No.28 of 2003 afresh and pass a speaking order.

4. After remand, the defendants have filed E.A.No.1 of 2020 under Section 28(1) of the Specific Relief Act, 1963 and Section 151 C.P.C to declare the sale agreement dated 20.08.1998 as null and void since the plaintiffs have not paid Rs.10,000/- within 31.03.2003 and has not deposited the amount into court. After perusing the records and hearing the arguments made by both sides, the learned Principal Subordinate Judge, Tenkasi dismissed E.A. No. 1 of 2020. Against the said order, the petitioner has filed the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners/defendants would submit that property is a residential property and the decree itself is an ex-parte decree. Further the trial court, while passing the decree, directed the respondent/plaintiff to pay the balance sale consideration of Rs.10,000/- on or before 31.03.2003. The respondent/plaintiff failed to pay the said amount within the stipulated time and therefore, he is not entitled to get sale deed and the sale agreement itself was not in force. Therefore, the petitioners have filed E.A.No.1 of 2020 under Section 28(1) of Specific Relief Act, 1963 and Section 115 of C.P.C for cancellation of sale agreement dated 20.08.1998.

6. According to the learned counsel for the petitioners, the learned Principal Subordinate Judge, Tenkasi, ought to have considered that the respondent has not paid the balance amount of Rs.10,000/- directly to the petitioners or deposited the money into the court within the stipulated time i.e on or before 31.03.2003 and further, the respondent has not filed an application for extension of time. He would strenuously argue that since the respondent has not complied with direction issued by the trial while issuing



7. In support of his contention, the learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court of India in **2015(2) CTC 559** (in **P.R.Yelumalai Vs. N.M.Ravi**) and the judgment of this Court dated 20.03.2017 in **C.R.P(MD)No.122 of 2018 and 552 to 554 and 1624 of 2016**. Relying on the said judgments, the learned counsel for the petitioners submitted that in the absence of compliance of the decree, the decree holders are not entitled for getting relief of execution of decree. According to the learned counsel, in the present case also, the respondent has neither paid the amount specified in the decree nor filed any application for extension of time. In view of the law laid down by the Hon'ble Supreme Court of India, the respondent is not entitled for decree to be executed. The lower court has failed to consider the legal preposition of law and therefore, the same needs to be interfered by this Court.

8. Heard the learned counsel for the petitioner and perused the entire materials available on record.

9. It is seen from the records that the respondent/plaintiff has filed the suit in O.S.No.28 of 2003 against the petitioners for specific performance. The said suit was decreed on 28.02.2003 as prayed for. The prayer in the suit is that as per the sale agreement dated 20.08.1998, except the amount of Rs.90,000/-, which was paid earlier, the defendants have to receive Rs.10,000/- and to execute a sale deed in favour of the plaintiff within the time stipulated by the court, failing which, the sale deed may be executed through court. As an alternate relief, the defendants shall pay advance amount of Rs.90,000/- with interest within the time stipulated by the court. The defendants shall pay the costs also.

10. In this case, a careful perusal of the record would show that the respondent filed Execution Petition in E.P.No.17 of 2013. In that Execution Petition, the respondent herein filed a lodgement schedule before the Executing Court and they also deposited money. Now the balance sale consideration of Rs.10,000/- is in the court deposit. The Execution Petition was allowed and if the petitioners failed to execute the sale deed, the court has to execute the sale deed in favour of the respondent. At that time, the petitioners herein filed a Civil Revision Petition in C.R.P.(MD)No.1639 of 2015. On 26.09.2019, this Court has set aside the order passed in E.P.No.17 of 2013 and directed the Executing Court to hear E.P.No.17 of 2013 afresh in accordance with law. Thereafter, the petitioners herein have filed an application in E.A.No.1 of 2020 in E.P.No.17 of 2013 under Section 28(1) of Specific Relief Act, 1963 and Section 115 of C.P.C seeking cancellation of sale agreement dated 20.08.1998 since the respondent has not complied with the decree passed on 28.02.2003 by paying the balance consideration of Rs.10,000/- within 31.03.2003.



11. As already stated, the decree is of the year 2003 and the respondent filed Execution Petition in the year 2013. The respondent has deposited balance consideration before the court. Of course, the respondent has not filed any application for extension of time. However, he sought for lodgment schedule and the court has also issued lodgment schedule. As per the lodgment schedule issued by the court, the respondent has deposited the balance amount of Rs.10,000/- and the same is in the court deposit. The petitioners herein have filed a counter in E.P.No.17 of 2013 in the year 2014 itself. The petitioners have not filed any application in earlier occasion to deposit the amount which was received as an advance. However, it is to be noted that as per sale agreement, total sale consideration is Rs.1,00,000/-. Out of one lakh, Rs.90,000/- i.e almost 90% of sale consideration is said to have been paid and that has not been challenged by the petitioners herein either by way of appeal against the decree or an application to set aside the ex-parte decree. No doubt, the respondent filed Execution Petition only after 10 years i.e in the year 2013 and the petitioners soon after receiving notice in the Execution Petition neither repaid the sale consideration which was said to have been received by the petitioners nor took any steps to deposit the amount before the Court. Therefore, both the petitioners and the respondent have not complied the court's order in the first instance.

12. After filing of Execution Petition by the respondent in the year 2013, a counter was filed by the petitioners in 2014. At that time, the balance sale consideration was also paid by the respondent before the court. After six years of payment of balance sale consideration, the petitioners have filed E.A.No.1 of 2020 under Sections 28(1) of Specific Relief Act, 1963 and Section 115 of C.P.C. The Executing Court allowed the Execution Petition. This Court has set aside the said order passed by the Executing Court in C.R.P(MD)No.1639 of 2015. However, when the matter was remanded back to the Executing Court to consider afresh, the petitioners have not contested the Execution Petition. Now they filed an application in E.A.No.1 of 2020.

13. Further, total consideration is Rs.1,00,000/- and out of one lakh, Rs.90,000/- is said to have been paid. Only balance sale consideration is Rs.10,000/-. Even though the respondent has not approached the court immediately, they filed Execution Petition in the year 2013 and the court has allowed him to deposit the amount and that amount was also deposited. Therefore, the petitioners have neither approached the court soon after 31.03.2003 nor immediately after filing of Execution Petition. Considering the fact that the petitioners are said to have received major portion of sale consideration and the balance consideration is only meagre portion i.e Rs.10,000/- i.e 10% of sale consideration, this Court does not find any perversity in the order passed by the Executing Court.



14. There is no quarrel with the legal preposition of law laid down by the Hon'ble Supreme Court of India. In that case. Advance amount itself is only minor portion and major portion has to be paid. But in this case, the petitioners have already said to have received major portion of sale consideration and balance amount is only minor portion i.e 10%. The petitioners have blamed the respondent for not approaching the court in time. The petitioners have also failed to approach the court within a reasonable time. In these circumstances, this Court finds that the citations referred by the learned counsel for the petitioner are not applicable to the present case on hand.

15. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. However, the Executing Court is directed to dispose E.P.No.17 of 2013 on merits as already directed by this Court in C.R.P(MD)No.1639 of 2015. While disposing E.P.No.17 of 2013, the court below shall not be influenced by any of the observations made by this Court in the present revision petition.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Principal Sub-Judge,
Tenkasi.

C.R.P(MD) No.500 of 2020
and C.M.P(MD)No.3138 of 2020
01.06.2020

SDS (18.06.2020) 5P-2C