



WEB COPY

C.R.P.(NPD)(MD)No.977 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.01.2019

Delivered On : 20.05.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(NPD)(MD)No.977 of 2019

and

C.M.P.(MD)No.5499 of 2019

S.Cletus Babu

.. Petitioner/Petitioner/Petitioner/
3rd praty /3rd party

Vs.

1.S.Navaneethakrishnan

...1st Respondent/ 1st Respondent/
1st Respondent/ Petitioner/Plaintiff

2.K.M.Mohamed Meeran Mytheen

3.K.M.Abdul Mader

4.K.M.Shahul Hameed

5.K.M.Razool Beevi

6.K.M.Alaudeen

7.K.M.Mohideen Bathu

8.K.M.Barakath Nizha

9.K.M.Rahamath Nizha

10.K.M.Subaitha Begum

..2 to 10 Respondents/2 to 10 Respondents/
2 to 10 Respondents/Respondents/Defendants

Prayer: This Civil revision petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order passed in an unnumbered petition in E.A.No.297 of 2012 in E.P.No.111 of 2012 in O.S.No.78 of 2009 dated 25.03.2019 on the file of Principal Sub Court, Tirunelveli.

For Petitioner : Mr.Meenakshi Sundaram,
Senior Counsel
For Mr.N.G.A.Natraj

For 1st Respondent : Mr.H.Arumugam

For Respondents 2 to 10 : Given up

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in an unnumbered petition in E.A.No.297 of 2012 in E.P.No.111 of 2012 in O.S.No.78 of 2009 dated 25.03.2019 on the file of the learned Principal Subordinate Judge, Tirunelveli.

3.The petitioner herein is a third party, the first respondent herein is the plaintiff and the respondents 2 to 10

<https://hcservices.ecourts.gov.in/hcservices/>



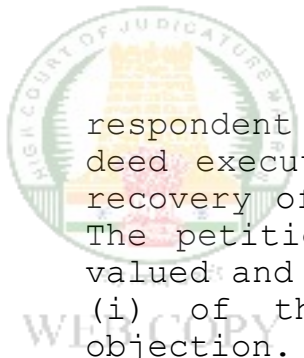
herein are the defendants in the suit. The first respondent herein has filed a suit in O.S.No.78 of 2009 for a prayer of specific performance. The suit was decreed and E.P.No.170 of 2009 was filed for the execution of the sale deed. The sale deed was executed by the Court on 30.04.2010. The first respondent herein filed another petition in E.P.No.111 of 2012 for delivery of possession. The third party/revision petitioner filed an application in E.A.No.297 of 2012 under Order 21 Rule 97 and 101 of CPC and Section 151 of CPC to conduct an enquiry and to dismiss E.P.No.111 of 2012 and to recall the delivery warrant dated 20.07.2012. During the pendency of the application, the petitioner herein has filed an unnumbered E.A to terminate E.P. No.111 of 2012.

4.The brief substance of the application in the unnumbered E.A. is as follows:

The first respondent filed a petition in E.P.No.111 of 2012 and produced a sale deed dated 30.04.2010 registered as document No.2902/2010 before the Melapalayam Sub Registrar's office. The sale deed was executed by the Court as per the decree passed in O.S.No.78 of 2009. That suit itself was a collusive suit and the respondents 2 to 10 remained exparte. Against the sale deed, the proceedings under Section 47(a)(i) of Indian Stamp Act has been initiated. The first respondent has to pay a sum of Rs.40,54,250/- (Rupees Forty Lakhs Fifty four Thousand Two Hundred and Fifty only) towards deficit stamp duty and the first respondent has to pay a sum of Rs.5,06,795/- (Rupees Five Lakhs Six Thousand Seven Hundred and Ninety Five only) towards deficiency in registration fees.

5.After the filing of the execution petition, the plaintiff entered into an agreement for sale with one Natarajan of Thiruvavoor and with one Sudha of Nagercoil. In that agreement, the first respondent valued the property at Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) per cent. The value of the suit property with an extent of 2 acres 74 cents is Rs.15,07,00,000/- (Rupees Fifteen Crores and Seven Lakhs only). The sale deed in E.P.No.111 of 2012 should be duly stamped and proper registration fees is to be paid as per Section 35 of the Indian Stamp Act. Since it is insufficiently stamped, the sale deed cannot be received as evidence. Hence, the Court has to conduct an enquiry and to dismiss E.P.No.111 of 2012 under Order 12 Rule 97 and 101 of the Civil Procedure Code. That petition was rejected by the trial Court. Against which, the petitioner preferred this revision petition.

6.On the side of the petitioner, it is stated that the first respondent filed a suit for specific performance and the suit is a collusive suit and the respondents 2 to 10 remained exparte. The respondents have no title over the property, as they already failed in an earlier suit. It is stated that the petitioner purchased the property from the original owner. Suppressing all the above facts, a collusive decree was obtained by the respondents and the first



respondent has filed a petition in E.P.No.111 of 2012 and got a sale deed executed through the Court. Only when the E.P. was filed for recovery of possession, the petitioner came to know about the suit. The petitioner came to know that the sale deed executed is under valued and that a proceedings has been initiated under Section 47(a) (i) of the Indian Stamp Act. Then the petitioner filed his objection. Since the sale deed was not properly stamped or valued, E.P proceedings cannot be proceeded on the basis of the sale deed and prayed that the E.P. Is to be terminated.

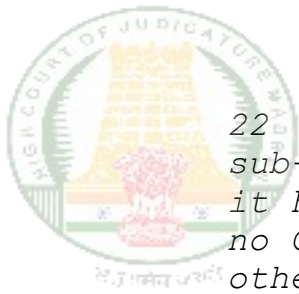
7.It is further stated that when the decree is not for delivery of possession, E.P. Court cannot grant a relief of delivery of possession. The document, which is under valued, cannot be the basis for delivery of possession. Under Section 35 of the Stamp Act, the sale deed is invalid and the sale deed could not be acted upon unless it is duly stamped. The first respondent entered into a sale agreement with Natarajan and Sudha and as per the sale agreement, the value of the property is more than 5 crores.

8.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Municipal Council Thanesar and others v. Virender Kumar and others** reported in **2019 (3) CTC 729**, wherein it is stated as follows:

"9.As regards the second issue, the executing Court correctly appreciated that the award did not specifically state that the Interest @ 7% per annum was to be awarded with quarterly rests. In fact, the Award did not specify anything; whether it be quarterly rests or yearly rests. It simply awarded interest @ 7% per annum. Since the award was completely silent on that aspect, at the stage of execution, no addition or alteration could be made in the operative directions issued in the award. The award had seen the challenges at three levels and at none of those stages, there was any modification in the operative directions of the award."

9.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt. Ltd. v. Daulate and another** reported in **2001 (4) CTC 39**, wherein it is stated as follows:

"17.It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) therefore. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of Sub-Section (2) of Section



22 is that nor relief under Clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no Court can grant the relief of possession of land or other immovable, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for."

10. On the side of the first respondent, it is stated that the petitioner is a third party to the suit. E.P.No.111 of 2012 was filed by the first respondent/plaintiff for delivery of possession and the same was allowed. The plaintiff filed petitions in E.A.Nos.254 to 256 of 2012 to get permission to break open lock and for police help. The petitioner obstructed the delivery of possession and the trial Court has ordered delivery of possession with the help of Police. The petitioner herein has filed an application in E.A.No.294 of 2012 obstructing the delivery. The revision petitioner has also filed C.R.P.(MD)No.1855, 1856, 1857 and 1862 of 2012 against the order passed in E.A.Nos.254 to 256 of 2012 and this Court has set aside the order passed by the trial Court and remanded the same with a direction to decide the obstruction petition first and then to pass orders in the petition for delivery.

11. During the pendency of the obstruction petition, the petitioner herein has filed another petition in E.A.No.233 of 2014 for appointment of an Advocate Commissioner to note down the physical features of the suit property. The petition was allowed and an Advocate Commissioner was appointed by the trial Court to note down the physical features of the suit property. Against which, the first respondent herein has filed C.R.P.(MD)No.113 of 2015 and the same was allowed.

12. On the side of the first respondent, it is further stated that a third party to the suit cannot seek for termination of E.P. An obstruction petition has to be decided as a civil suit. The third party has to first establish his right and then only he can seek for the dismissal of the E.P. If a document is not properly stamped, Court can impound the document or it can order to deposit the deficit stamp duty. Already E.P. was closed as delivery was effected.

13. On the side of the first respondent, it is stated that if the obstructor wants to question the decree, he has to file a separate suit. The learned counsel for the first respondent would rely upon the judgment passed by this Court in the case of **Munusamy and others v. Vengadachalam and others** reported in **2011 (2) MWN (Civil) 150**, wherein it is stated as follows:

"not necessary for executing Court to go into title of decree holder even though it is questioned by



obstructor - enquiry only limited to right of obstructor"

14. On the side of the first respondent, it is further stated that the third party cannot seek termination unless the third party proves that he is having a right. The delivery proceedings was over on 23.01.2019. The intention of the petitioner is only to prolong the matter.

15. The learned counsel for the first respondent would rely upon the judgment passed by this Court in the case of **P.Baskar v. Aditya Real Estates** reported in **2018 (1) CTC 342**, wherein it is stated as follows:

"29. The Hon'ble Supreme Court had after referring the Section 22 of the Specific Relief Act had concluded that a suit for specific performance of an agreement of sale wherein the relief of delivery of possession of the suit property having been specifically claimed, as such, cannot be treated as a suit for land.

32. As rightly pointed out by Mr.K.V.Babu, learned counsel for the applicant Hon'ble Justice R.S.Ramanathan in the judgment of B.Rathansingh v. P.G.Sekar, 2014(4) CTC 735, would conclude that even though possession is not specifically sought for, still the suit for specific performance would be a suit on land inasmuch as possession is inherent in a suit for specific performance.

40. This averment in particular would show that the agreement, specific performance of which is sought for, obliged the defendant to hand over the possession of the property to the plaintiff. Enforcement of the agreement as a whole would also encompass within itself, the obligation of the defendant to hand over the possession of the suit property. Therefore, the agreement that is sought to be enforced will include the relief of possession also. The suit for specific performance though filed without an express prayer for delivery of possession would take in itself a prayer for delivery of possession. Therefore, on his own showing the plaintiff has prayed for delivery of possession also."

16. The learned counsel for the first respondent would rely upon the judgment passed by this Court in the case of **Government of Tamil Nadu v. Park View Enterprises and others** reported in **(2001) 1 Supreme Court Cases 742**, wherein it is stated as follows:



" The legislative intent as expressed in Section 35 stands clear to the fact that refusal to register is not permissible in terms therewith. Section 35 is a provision to cater for the instruments not being properly stamped and as such being inadmissible in evidence. It is not that the legislative was not aware of the stamp duty but a special power has been conferred on the Registrar in that regard and the Collector has been empowered to impose appropriate fees and stamp duty in terms of provision of Section 38 read with Sections 39 and 40 of the Act. The powers of the Collector as specified therein, stand in an unambiguous situation as the final authority in the matter of assessment of the duty leviable thereon, and that is precisely the reason as to why the State Legislature engrafted Section 47 - A and specifically records in the statute that steps are to be taken only after registration of such an instrument. It can thus conclusively be said that there is existing a categorical expression of legislative intent in regard to the registration of the document - the registration is effected subject to the condition as provided in the statute itself with proper safeguard being taken note of by the legislature and contraexpression of opinion would run counter to the legislative intent which is otherwise not permissible in law."

17.The learned counsel for the first respondent would rely upon the judgment passed by this Court in the case of **S.Bhaskaran v. Sebastian (Dead) by lrs. and others** reported in **2020) SAR (Civ) 18**, wherein it is stated as follows:

"It is well settled that an executing Court cannot travel beyond the order or decree under execution."

18.On the side of the petitioner, it is stated that the petitioner is not a party to the suit. The decree is obtained by committing fraud. The petitioner questioned the validity of the decree in O.S.No.78 of 2009 on the ground of collusion with the defendants. In E.P.No.170 of 2009, the sale deed was executed and that E.P.No.111 of 2012 was filed on the basis of the sale deed.

19.On the side of the petitioner, it is stated that for possession the decree has to be amended and that the stamp duty has to be paid before taking possession. The execution Court cannot act upon a document with insufficient stamp duty.



20.It is seen that a separate proceedings have been initiated by the authorities for an enquiry regarding the stamp duty payable on the sale deed. The petitioner is a third party who claims right over the property. The petitioner has not filed any suit for declaring his title or questioning the decree. The petitioner just filed the petition E.A.No.297 of 2012 obstructing the delivery of the possession. Without proving his right the third party, petitioner is questioning the stamp duty of a particular document. In the above circumstances, an liberty is to be given to the petitioner to file a separate suit questioning the decree and to establish his rights. Already delivery was effected.

21.In the above circumstances, there is nothing sufficient enough to interfere in the orders passed in the trial Court. This Civil Revision Petition is dismissed and the order passed in the unnumbered petition in E.A.No.297 of 2012 in E.P.No.111 of 2012 in O.S.No.78 of 2009 dated 25.03.2019 on the file of the learned Principal Subordinate Judge, Tirunelveli is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

MRN

Note : *With the consent of both side counsels, this order is pronounced in the open Court through video conference system on 20.05.2020.*

To

The Principal District Judge, Tirunelveli.

C.R.P. (NPD) (MD) No.977 of 2019

20.05.2020

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