



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 19.02.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1888 of 2019

and

CMP (MD)No.9644 of 2019

Sathiyamoorthy

... Petitioner/Respondent/
Respondent/Defendant

Vs.

Padmanaban @ Padmanathan

... Respondent/Petitioner/
Petitioner/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.08.2019 made in E.A.No.7 of 2018 in E.P.No.62 of 2012 in O.S.No.26 of 2011 on the file of the learned Principal District Judge, Karur, and to allow the above civil revision petition.

For Petitioner : Mr.C.Jeganathan

For Respondent : Mr.M.P.Senthil

ORDER

This petition has been filed against the order dated 25.08.2019 made in E.A.No.7 of 2018 in E.P.No.62 of 2012 in O.S.No.26 of 2011 on the file of the learned Principal District Judge, Karur.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit.

3.The plaintiff filed a suit in O.S.No.26 of 2011 for a prayer of specific performance. The suit was decreed in favour of the plaintiff. The plaintiff filed a petition in E.P.No.62 of 2012 for execution of the sale deed. In that EP proceedings, E.A.No.17 of 2013 was filed by the defendant and the same was allowed on condition that the defendant should deposit 50% of the sale price mentioned in the sale agreement. E.A.No.7 of 2018 was filed by the plaintiff for delivery of possession and that petition was allowed by the Trial Court on 25.09.2019. Against which, the petitioner preferred this revision.



4.The brief substance of the E.A.No.7 of 2018 is as follows:-

The petitioner obtained a decree for specific performance and the respondent filed a petition in I.A.No.58 of 2013 to condone the delay of 437 days in filing application to set aside the ex-parte decree. That petition was dismissed by the Trial Court. Against which, the defendant filed a revision petition in CRP.(NPD)(MD) No.1697 of 2013 and CRP.(NPD)(MD)No.1698 of 2013. Thereafter, sale deed was executed on 16.02.2017 and then the plaintiff filed a petition for delivery of possession.

5.The brief substance of the counter filed by the respondent / defendant in E.A.No.7 of 2018 is as follows:-

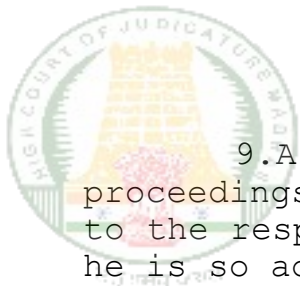
Against the order dated 20.06.2016 passed in E.P.No.62 of 2011, the defendant filed a revision in CRP.(MD)No.1503 of 2016 and CMP.(MD)No.7351 of 2016 and the same is still pending and stay granted by this Court on 21.10.2016 is still in force. In the suit for specific performance, the plaintiff got a decree in his favour on 23.12.2011. After getting the decree, the plaintiff has filed a Execution Petition in E.P.No.62 of 2012 for execution of sale deed and the same was executed by the Court. Again, the plaintiff filed a petition in E.A.No.7 of 2018 for recovery of possession and delivery was ordered. Hence, the revision petitioner has preferred this revision.

6.On the side of the respondent, it is stated that in CRP.(NPD)(MD)Nos.1697 & 1698 of 2013, initially a stay was granted on condition to pay 50% of the sale price mentioned in the sale agreement. Since, the condition not complied with, the petitions were dismissed and the decree attained finality. Copy of the order of this Court in CRP.(NPD)(MD)Nos.1697 & 1698 of 2013 is filed. It is stated that CRP(MD)No.1503 of 2016 and CMP(MD)No.7351 of 2016 were disposed of by this Court on 31.08.2018. Copy of the order is available in the type set. On the side of the respondent / Plaintiff, it is further stated that delivery was also ordered in the E.A. Petition.

7.On the side of the respondent, a judgment published in **2017-5-L.W. 526** is cited wherein it was decided as follows:-

"Decree operating against first respondent unless and until it is set aside by the higher forum, decree executable".

8.It is seen that the Execution Court cannot go beyond the decree. The petitioner has not taken further steps against the dismissal of CRP.(NPD)(MD)Nos.1697 and 1698 of 2013 or against the disposal of CRP.(MD)No.1503 of 2016 dated 31.08.2018.



9.A verification of the records reveals that the entire E.P proceedings is based on a *ex-parte* decree. Hence, liberty is given to the respondent to take separate action in accordance with law, if he is so advised.

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10.In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the Trial Court. Hence, the order passed by the Trial Court in E.A.No.7 of 2018 in E.P.No.62 of 2012 in O.S.No.26 of 2011 on the file of the learned Principal District Judge, Karur, is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Principal District Judge, Karur.

2.The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-7432[F] dated 20/02/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-7348[F] dated 20/02/2020)

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