

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.09.2021

CORAM
The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P (NPD)No.1180 of 2015

and

M.P.No.1 of 2015

1. Kamala
2. Gowri

..Revision Petitioners

vs.

1. Malliga
2. Ramalingam
Varadhammal (died)
3. Vanaja

..Respondents

PRAYER:

Civil Revision Petition filed under Section 115 of CPC against the fair and decretal order, dated 20.02.2015, made in E.A.No.4 of 2008, in E.P.No.203 of 2003, in O.S.No.140 of 1998, on the file of the Sub Court, Ranipet, Vellore District.

For Revision Petitioners : Mr.S.Mukunth
for M/s.Sarvabhaumann Associates

For Respondent-1 : Mr.P.Mani
Respondent-2 : Notice Served, no appearance

ORDER

The challenge in this Civil Revision Petition is to the order passed by the Executing Court, (Sub Court, Ranipet) in E.A.No.4 of 2008, in E.P.No.203 of 2003, in O.S.No.140 of 1998.

2. The learned counsel appearing for the revision petitioners submits that, one Mrs.Varadhammal was the mother of both the revision petitioners and the second respondent herein. When the said Vardammal was alive, she executed a Will in favour of her son/second respondent. Subsequently, the said Will was revoked and the said Vardammal settled the property in favour of the revision petitioners vide a settlement deed, dated 29.07.1997. During the lifetime of Vardammal, the second respondent, without any *locus standi*, enter into an agreement of sale on 09.01.1997 with the first respondent. Based on the said agreement, the agreement holder filed a suit for specific performance in O.S.No.140 of 1998 against the second respondent/first defendant and Vardammal/second defendant. The said suit was decreed, pursuant to which, execution proceedings were initiated against the judgment debtors, and since the second defendant-Vardhammal

passed away, the revision petitioners were impleaded as parties to the execution proceedings.

2.1 The main contention of the learned counsel for the revision petitioners is that, the second respondent, during the lifetime of his mother Vardhammal, without any authority, entered into agreement of sale, by concealing the vital fact that her mother/second defendant had executed a settlement deed in favour of the revision petitioners, whereby, the revision petitioners have right/title/interest over the property covered in O.S.No.140 of 1998 and in order to prove the same, the revision petitioners filed a comprehensive suit in O.S.No.95 of 2014, which was re-numbered as O.S.No.6 of 2015 and the same is pending on the file of the Additional District Court, Ranipet. Therefore, the learned counsel submits that the revision petitioners' right requires to be adjudicated in O.S.No.6 of 2015, and since the decree in O.S.No.140 of 1998 was obtained behind the back of the Court, as the second respondent concealed the fact of execution of the settlement deed in favour of the revision petitioners, in respect of the property in O.S.No.140 of 1998, the decree passed in O.S.No.140 of 1998

has to be declared as nullity and the consequential order passed in E.P.No.203 of 2003 has to be set aside.

3. The learned counsel for the first respondent submits that, as on date, the revision petitioners have not obtained any decree in their favour, in O.S.No.6 of 1995 and therefore, there is no impediment for the first respondent to take possession of the property. In the event, if any decree is passed, in O.S.No.6 of 2015, the revision petitioners can very well take steps for execution of the decree in accordance with law.

4. Heard the learned counsel for the revision petitioners and the first respondent and perused the materials available on record.

5. The Suit in O.S.No.140 of 1998 was filed by the first respondent-agreement holder for the relief of specific performance, wherein, the revision petitioners' mother was impleaded as second defendant. After the decree was passed, the second defendant passed away. Based on the decree passed in the suit, the respondent-decree holder initiated execution

proceedings in E.P.No.203 of 2003, wherein, the revision petitioners, being the legal heirs of the deceased second defendant were impleaded as parties. Objecting to the execution of the decree obtained in O.S.No.140 of 1998, the revision petitioners wrongly filed application under Section 47 CPC in E.P.No.99 of 2010. Hence, the same was dismissed and there was no challenge to the same. Subsequently, the revision petitioners filed E.P.No.4 of 2008, against the execution of the decree. The said E.P.No.4 of 2008 was also dismissed. Now, the challenge in this Revision Petition is against the said dismissal of E.A.No.4 of 2008, as by virtue of the order passed thereunder, possession of the suit property was handedover to the decree holder.

5.1 This Court is unable to accept the contentions of the learned counsel for the revision petitioners. The learned counsel himself fairly admitted that the rights of the revision petitioners has to be adjudicated in the suit filed by them, viz., O.S.No.6 of 2015. Thus, as long as the revision petitioner's right over the property in question has not been adjudicated in O.S.No.6 of 2015 as on the date of the execution of the

decree in O.S.No.140 of 1998, certainly, they have no right to raise objections for execution of the decree in O.S.No.140 of 1998. As rightly contended by the learned counsel for the first respondent, as of now, the revision petitioners have not obtained any decree in their favour, in O.S.No.6 of 2015, and therefore, there is no impediment for the first respondent to take possession of the property. Therefore, this Court is of the view that no order is required to be passed in this Civil Revision Petition. In the event, any decree is passed in favour of the revision petitioners in O.S.No.6 of 2015, it is open to the revision petitioners to take action in accordance with law.

6. With the above observations, this Civil Revision Petition stands closed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No
Speaking/Non-speaking
sd

To

1.The Sub Court, Ranipet, Vellore District.



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Krishnan Ramasamy, J.,
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