

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.4542 of 2015
and M.P.No.1 of 2015

1.Sathiyamurthy
2.Tamilarasi

...Petitioners

Vs

1.S.Sekar
2.Jayaraman
3.Rajendran
4.Ammavasai
5.Venkatesan
6.Shanmugam

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to strike off the petition in E.A.No.220 of 2015 in E.P.No.139 of 2013 in O.S.No.271 of 2008 on the file of the Principal District Munsif, Villupuram.

For Petitioners : Mr.N.Suresh

For Respondents : No Appearance for R1
R2 to R6 - Given up

ORDER

The Civil Revision Petition is directed as against the petition filed by the 1st respondent herein under Order 21, Rule 97 in E.A.No.220 of 2015 in E.P.No.139 of 2013 in O.S.No.271 of 2008 on the file of the Principal District Munsif, Villupuram.

2.The petitioners are the plaintiffs. They filed the suit as against the respondents 2 to 6 herein for declaration and injunction in respect of the suit property. The said suit was decreed exparte by the Judgment and decree dated 09.06.2009. After the exparte decree, the respondents 2 to 6 did not take any steps to set aside the exparte decree passed in favour of the petitioners. Therefore, the exparte decree dated 09.062009 become final. Thereafter, some 3rd parties are encroached the suit property and as such the petitioners also filed an application in E.A.No.12 of 2011 in O.S.No.271 of 2008 and the same was allowed and directed to remove the hut put up by the 3rd parties/respondents in the suit property. Thereafter the petitioners also filed execution petitions in E.P.No.139 of 2013. While pending the execution proceedings, the 1st respondent filed a petition under Order 21

Rule 97 stating that the part of the suit property was sold out by the 1st defendant in the suit, namely the 2nd respondent herein on 17.04.2009 for the sale consideration of Rs.40,715.75/- by a valid registered sale deed dated 17.04.2009. The 1st respondent further stated that in the said sale deed Survey No. was wrongly mentioned and as such by the rectification deed executed by the 1st defendant in the suit, the Survey No. was corrected.

3.The learned counsel for the petitioners would submit that when the decree was passed on 09.06.2009, the Court below ought not to have entertained the petition filed by the 3rd party namely the *transfere pendente lite*. Further he submitted that the sale deed hits under Order 21 Rule 102 of CPC, and also hit under Section 52 of the Transfer of Property Act. In support of his contention he relied upon the case of ***Thirugnanasambandam Vs. Sundaramurthy Chettiar and others*** reported in **2014 (4) CTC 850**. In the above cited Judgment, this Court has held as follows:-

"12.The Hon'ble Supreme Court also dealt with the same question in Usha Sinha Vs. Dina Ram and

Others, 2008 (7) SCC 144. The following were the observations made in the said case:

"Bare reading of the Rule (Rule 102 of Order 21, CPC) makes it clear that it is based on justice, equity and good conscience. A transferee from the Judgment-debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the Doctrine of lis pendens recognised by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a Decree-holder will never be able to realise the fruits of his Decree. Every time the Decree-holder seeks a direction from a Court to execute the Decree, the Judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted." The Hon'ble Supreme Court also made the following observations:

"It is thus, settled law that a purchaser of Suit property during the pendency of litigation has no right to

resist or obstruct execution of Decree passed by a competent Court. The Doctrine of "lis pendens" prohibits a party from dealing with the property which is the subject-matter of suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a Decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the Judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21".

13.If the law declared by the Hon'ble Apex Court as indicated supra, is applied to the facts of the case, there can be no doubt regarding the position that the First Respondents herein, being the transferee of the Judgement-debtor and the transfer (lease) was effected after the passing of the Decree against his transferor and in favour of the First Respondent herein for recovery of possession of the suit property, the First Respondent herein shall not have the right to offer resistance or obstruction to the execution of the Decree and he is bound by the Decree passed against his transferor (lessor), as he himself is the Judgment-debtor for the simple reason that he got no better right than that of his transferor (Judgment-debtor). Since the transfer of

*right (creation of lease) is said to have been made after the passing of the Decree against the Judgment-debtor and after the dismissal of the Special Leave Petition filed before the Supreme Court seeking leave to file an Appeal against the Decree passed by this Court, the First Respondent herein, shall be very much bound by the Decree as if he himself is the Judgment-debtor. Being a transferee after the passing of the Decree, the First Respondent cannot be heard to contend that his Claim Petition should not have been rejected without even numbering it. The very observations made by the Hon'ble Apex Court in **Usha Siha's case** will be attracted to the facts of the case to support the decision against the First Respondent herein. Moreover, it is a glaring example of abuse of process of Court on the part of the First Respondent herein in collusion with the Judgment-debtor."*

This Court has held that the transferee shall not have the right to offer resistance or obstruction to the execution of decree and he is bound by the decree passed against the transferor as he himself Judgment-debtor for the simple reason that he got no better right than that of the transferor. Since the transfer of right is said to have been made after passing of decree against

the Judgment-debtor and after the dismissal of the Special Leave Petition filed before the Hon'ble Supreme Court of India. In the case on hand, the suit filed by the petitioners was decreed on 09.06.2009. Though initially, the sale deed was executed by the 1st defendant in favour of the 1st respondent herein on 17.04.2004, the rectification was executed only on 15.07.2009, thereby the Survey No. was included in the suit schedule property. Therefore, it was registered only after the decree. In the above cited Judgment, it is squarely applicable to the case on hand.

4.A transferee from the Judgment-debtor, aware of the proceedings before the Court of law and he should be careful before the purchasers, which is the subject matter of litigation. It is also relevant to extract Rule 102 of Order 21 as hereunder:-

"102.Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

It is very clear that the resistance or obstruction in execution of decree for the possession of immovable property by a person to whom the Judgment-

debtor has transferred the property after the institution of suit, in which the decree was passed or to the dispossession of any such person. There should not be resistance or obstruction by a transferee *pendente lite*. Therefore the Court below ought not to have entertained the petition filed by the 1st respondent under Order 21 Rule 97 CPC.

In view of the above discussion, the Civil Revision Petition is allowed and the petition in E.A.No.220 of 2015 in E.P.No.139 of 2013 in O.S.No.271 of 2008 on the file of the Principal District Munsif, Villupuram, is hereby strike off. Further the Execution Petition is of the year 2013 and as such the learned Principal District Munsif, Villupuram, is directed to dispose of the E.P.No.139 of 2013 in O.S.No.271 of 2008, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

20.01.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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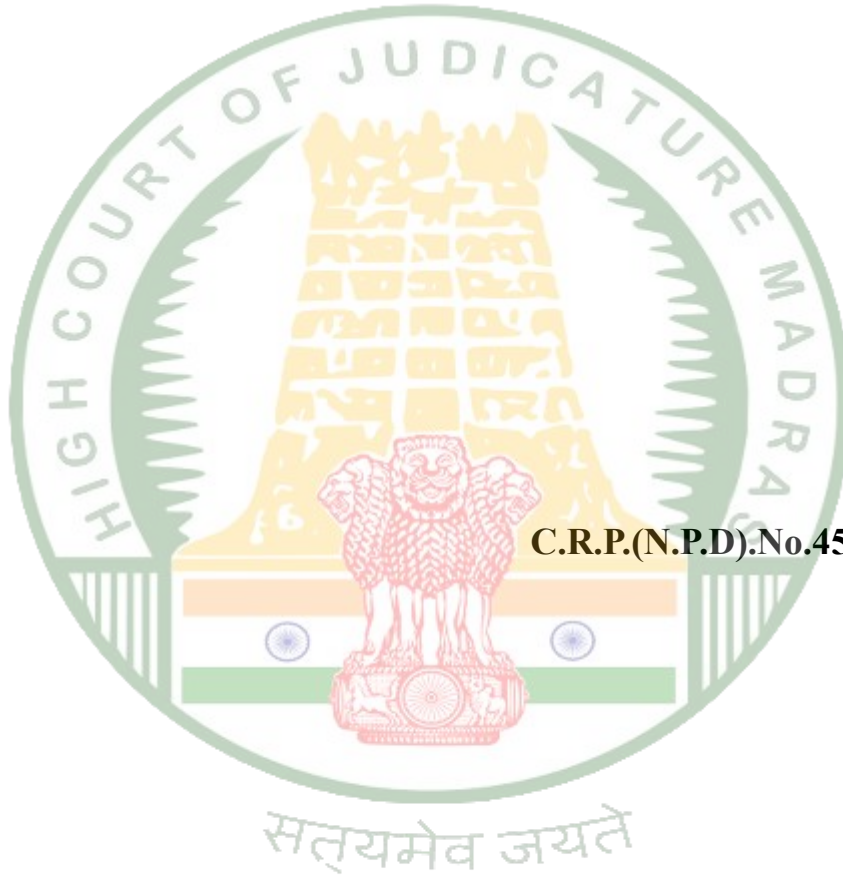
To

The Principal District Munsif, Villupuram.

C.R.P.(N.P.D).No.4542 of 2015

G.K.ILANTHIRAIYAN.J,

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