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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMSA.No.68 of 2021
and
CMP.No.15588 of 2021

M.Thangamani

...Appellant

Vs.

1.V.Sellamuthu

2.N.Palanisamy

3.R.Kandappan

T.L.Manickam (Died)

N.Natarajan (Died)

4.M.Kuladaiammal

5.J.Saraswathi

6.Kalyani

..Respondents

Prayer: Civil Miscellaneous Second Appeal filed under Order 43 Rule 1(i) r/w. Section 100 of C.P.C., against the fair and final order in CMA.No.13 of 2020 dated 16.02.2021 on the file of the Additional District Judge, Namakkal District confirming the fair and final order in EP.No.32 of 2009 (in OS.No.234 of 1991 Subordinate Court, Sankari) dated 06.01.2020 on the file of the Sub-Court, Tiruchengode.

For Appellant : Mr.A.Sivaji

For Respondents :Mr.N.Manokaran for R1 to R3 /

Caveator



J U D G M E N T

This civil miscellaneous second appeal is directed against the order confirming the judgment of the Additional district Judge, Namakkal in CMA.No.13 of 2020, the appeal against the order of the Sub-Court, Sankari made in EP.No.32 of 2009 dated 06.01.2020.

2.The proceedings arose out of a suit for specific performance laid by the respondents 1 to 3 herein, against one M/s. T.L.Manickam and N.Natarajan. The suit came to be decreed by the Sub-Court, Sankari on 27.02.2001. An appeal was filed against the said judgment and decree in AS.No.58 of 2002 before this Court, which came to be dismissed on 24.03.2009. The Appellant herein, who was impleaded as the legal representative of the deceased 1st defendant in the suit along with the other defendants challenged the correctness of the judgment of this Court in CA.No.4264 of 2010 before the Hon'ble Supreme Court. The said Civil Appeal also came to be dismissed on 16.11.2016. Thereafter, the decree was put in execution.

3.Before the Executing Court, the appellant herein, filed an application in EA.No.236 of 2017 purportedly under Order 21 Rule 58 projecting an independent claim over the property. The said execution application came to be dismissed by the Trial Court on 21.03.2018. An appeal in CMA.No.7 of 2018 filed by the appellant was also dismissed on 05.07.2019. Undeterred the appellant filed an appeal in CMSA.No.21 of 2020 in this Court and the same was dismissed on 25.08.2020.

4.The Appellant objected to the execution of the decree before the Executing Court on three grounds. The first ground is that the draft sale deed was not filed along with the Execution Petition. The second one is that the decree does not contain a clause for delivery of possession and therefore, the petitioners / decree holders cannot seek delivery of possession and the third ground is that due to considerable passage of time, the value of the property had increased and therefore, in equity, the decree cannot be executed. The Executing Court rejected all the three contentions and directed the decree holders to file a draft sale deed by its order dated 06.01.2020.

5.The petitioners preferred a civil revision petition against the said order in CRP.Sr.No.44438 of 2020. This Court, by order dated 14.07.2020 concluded that an appeal would lie against the order of the Executing Court under Order 43 Rule



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1(1) of C.P.C. Upon such conclusion, this Court directed the appellant to file an appeal. This Court also favoured the petitioner with an order of interim stay for a period of six weeks to enable the petitioner to move the Appellate Court, considering the lockdown imposed due to the Pandemic. The petitioner preferred an appeal in CMA.No.13 of 2020. The Additional District Judge, Namakkal, who heard the appeal rejected all the contentions of the petitioner and dismissed the appeal by order dated 16.02.2021. Aggrieved, the Appellant has come up with this appeal.

6.Heard Mr.A.Sivaji, learned counsel appearing for the Appellant and Mr.N.Manokaran, learned counsel appearing for the respondents 1 to 3.

7.Mr.A.Sivaji, learned counsel appearing for the Appellant would vehemently contend that the Executing Court erred in entertaining the Execution Petition without a copy of the draft sale deed being produced. In an Execution under Order 21 Rule 34, where a decree directing execution of a document is sought to be executed, the decree holder can seek execution and the production of a draft sale deed or a draft of the document that is directed to be executed is not mandatory. After hearing the judgment debtor, it is always open to the Executing Court to direct the decree holder to file a draft document and thereafter, approve the same for execution. I therefore, do not think there is no substance in the first objection. I am supported in this view of mine by the judgment of this Court in Shanmugam Vs. Arthanari reported in 2010 (2) MWN (Civil) 701.

8.The second objection that is raised is that the decree does not contain a clause for delivery of possession, therefore, the decree cannot be executed. Mr.A.Sivaji would rely upon the judgment of this Court in Vasantha Vs. Manickam @ Thandapani & Another reported in 2017 (2) LW 161 wherein, Hon'ble Mr.Justice M.V.Muralidaran had held that the Executing Court cannot direct delivery of possession, if the decree for specific performance does not direct delivery of possession. The learned Judge, while doing so, had relied upon the judgment of the Hon'ble Supreme Court in Adcon Electronics Pvt. Ltd., Vs. Daulate and Another reported in 2002 (1) LW 368. Unfortunately, the attention of this Court was not drawn to the subsequent judgment of the Hon'ble Supreme Court in Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and Others reported in 2015 (8) SCC 219 wherein, the Hon'ble Supreme Court had explained the judgment in Adcon Electronics (P) Ltd., Vs. Daulate and Another and had held that a decree for specific



performance would include a direction for delivery of possession. Absence of a specific clause directing delivery of possession is not mandatory.

9. Apart from the above, even in Babu Lal Vs. M/s. Hazari Lal Kishori Lal and Others reported in (1982) 1 SCC 525, the Hon'ble Supreme Court had considered the scope of a decree for specific performance. The Hon'ble Supreme Court after considering the Section 22 of the Specific Relief Act had held that it is not even incumbent upon the plaintiff to sue for possession. In another judgment in M. Mohan Vs. M. Kamalakannan reported in 2014 (3) MWN (Civil) 168, the Hon'ble Mr. Justice R. S. Ramanathan had considered the same question and had concluded that a clause for delivery of possession was inbuilt in the decree for specific performance and therefore, there need not be a decree, directing delivery of possession. In other words, it was held that a decree for specific performance encompasses in itself a direction for delivery of possession. Reference has also been made to the earlier judgment of the Hon'ble Mr. Justice Mr. R. S. Ramanathan in Krishnamurthy Gounder Vs. Venkatakrishnan reported in 2012 (1) CTC 823 wherein, the same position was reiterated after referring the Babu Lal's case cited supra.

10. I had an occasion to deal with the very same question in P. Baskar Vs. Aditya Real Estates reported in 2018 (1) CTC 342 wherein, after referring to the judgments of the Hon'ble Supreme Court in Babu Lal Vs. Hazari Lal, Adcon Electronics and Excel Dealcomm Pvt. Ltd., I had concluded that a decree for specific performance simplicitor would take in itself a decree for possession also. I had reiterated the said position again in Kanniappan and Others Vs. Yousuff Sait and others reported in 2020 (4) LW 851.

11. In the light of the proper endorsement of judicial opinion, I do not think, the petitioner could be allowed to raise the issue regarding absence of a decree for delivery of possession and a decree for specific performance would take in itself a decree for possession and also. The Judgment of the Hon'ble Mr. Justice M. V. Muralidaran taking the contrary view, in my considered opinion, cannot be treated as a valid precedent, in view of the fact that the subsequent judgment of the Hon'ble Supreme Court in Excel Dealcomm, explaining the judgment in Adcon Electronics was not brought to the notice of the learned Judge. Hence, the second objection fails.

12. As regards the third objection, Mr. A. Sivaji would rely upon the judgment of this Court in A. Sridharan Vs. B. Gowri



reported in 2021 (4) CTC 88 to contend that taking into account the passage of time, this Court has got the power to work out the equities. The judgment in A.Sridharan Vs. B.Gowri was rendered in an appeal against the decree for specific performance wherein, this Court took note of the subsequent increase in prices and granted specific performance decree subject to payment of a higher sale price. I do not think, sitting in an appeal arising out of Execution Proceedings, I can venture to do, what has been done by Hon'ble Mr.Jusice N.Sathish Kumar in A.Sridharan Vs. B.Gowri. The Executing Court is bound by the decree and it has to execute the decree as it is. The power of the Executing Court cannot extend beyond execution of the decree. I therefore, do not see any reason to entertain the appeal. This appeal therefore fails and it is accordingly, dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To:-

1.The Additional District Judge,
Namakkal.

2.The Subordinate Judge,
Tiruchengode.

+1cc to Mr.A.Sivaji, Advocate Sr.62892
+1cc to Mr.N.Manokaran, Advocate Sr.63172

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