



CRP.(NPD).No.1071/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(NPD).No.1071/2019 and CMP.No.7055/2019

[Video Conferencing]

Kondammal(died)
M.N.Venkatachalapathi(died)
M.N.Gangaram(died)
Srimathi(died)
Bakkiyavathi(died)
1.M.V.Bhaskar
2.Pathmini
3.Sulochana

.. Petitioners/Judgment Debtors
Defendants

Vs.

1.R.PremaLeela
2.R. Vasthala
3.N.Rajalakshmi

.. Respondent/Decree Holder/
Plaintiff

.. Respondents/Judgment Debtors/
Defendants

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the Docket order dated 01.03.2019 passed in REP.No.367/1996 in O.S.No.89/1987 on the file of the learned II Additional District Munsif Court, Salem.

For Petitioners : Mr.D.Gopinathan
For Respondents : Mr.Murugamanickam



CRP.(NPD).No.1071/2019

ORDER

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- (1) This Civil Revision Petition is directed against the Docket order dated 01.03.2019 passed in REP.No.367/1996 in O.S.No.89/1987 on the file of the learned II Additional District Munsif Court, Salem.
- (2) Aggrieved by the order dated 01.03.2019 in REP.No.367/1999 allowing the Execution Petition filed by the plaintiff in the Suit directing delivery of the Suit property and assistance of break open and police aid if any obstructions is made, the above revision is filed by the defendants.
- (3) Brief facts, that are necessary for the disposal of this Civil Revision Petition are as follows:
- (4) The 1st respondent as plaintiff filed the Suit in O.S.No.89/1987 on the file of the learned II Additional District Munsif, Salem for specific performance of an Agreement of Sale entered into between the petitioners/defendants and the 1st respondent/plaintiff. The Suit was decreed by the judgment and decree dated 21.08.1992 granting the relief of specific performance. It is pertinent to mention that the Suit is only in respect of 1/5th share of the revision petitioners as



WEB COPY



CRP.(NPD).No.1071/2019

the other sharers have already conveyed their right in favour of the 1st respondent/plaintiff.

- (5) Therefore, the decree that was granted by the learned II Additional District Munsif, Salem is only relating to the 1/5th share of the revision petitioners. It is admitted that pursuant to the judgment and decree in O.S.No.89/1987 a Sale Deed was also executed in favour of the 1st respondent/plaintiff in respect of the 1/5th share of the entire Suit property.
- (6) As pointed earlier, the 1st respondent/plaintiff had obtained a Sale Deed from the other co owners in respect of their 4/5th share by a separate Sale Deed dated 06.10.1986. Based on the strength of the previous Sale Deed 6.10.1986 and the decree that was granted in O.S.No.89/1987, the 1st respondent/plaintiffs filed REP.No.367/1986 for delivery of the entire property which is described in the Suit schedule. The revision petitioners were impleaded as the legal heir of 2nd defendant in the Suit.
- (7) The Execution Petition was contested by the revision petitioners questioning the maintainability of the petition seeking delivery of the entire property which is not even the subject matter of Suit.



WEB COPY



CRP.(NPD).No.1071/2019

However, the Court below allowed the petition holding that the decree holder is entitled to delivery of the property. The Court also directed assistance for breaking open and police aid if any obstruction is caused.

- (8) The learned counsel appearing for the revision petitioners submitted that the Executing Court passed the order without considering the facts and the legal position. Learned counsel submitted that the Suit for specific performance is only in respect of the 1/5th share out of the entire Suit property and that the Execution Petition was allowed for delivery of the entire property which is against the law as the Executing Court cannot go beyond the decree of the Lower Court.
- (9) Learned counsel submitted that the prayer in the Suit was not for recovery of possession in relation to the entire Suit property and that the decree holder has specifically admitted that he is not in possession of the remaining share of the property. Learned counsel relied upon the Sale Deed that was executed by the other co owners in favour of the 1st respondent/plaintiff. There is a specific recital in the Sale Deed to the effect that possession of the property is with



CRP.(NPD).No.1071/2019

Venkatachalapathi. It is in the said circumstances, learned counsel for the petitioners submitted that the order of the Lower Court directing delivery of the whole property cannot be sustained. It is also pointed out by the learned counsel appearing for the petitioners that the Executing Court issued direction to break open and provided for police aid, which is contrary to the well settled law.

- (10) This Court is unable to discard any of the submissions of the learned counsel appearing for the petitioners. Leaned Senior counsel appearing for the 1st respondent/plaintiff did not dispute the fact that the Suit is only for specific performance in respect of 1/5th share of the entire Suit property and it is not disputed that the possession of the entire property is with the revision petitioners. As a matter of fact, the other sharers who executed the Sale Deed in respect of their 4/5th shares have admitted that they are not in possession of the property and that the purchaser namely, 1st respondent/plaintiff can get possession from the said Venkatachalapathi either by negotiation or by approaching the Civil Court.



CRP.(NPD).No.1071/2019

(11)

Therefore, the order passed by the learned II Additional District Munsif, Salem directing delivery of the entire property is unsustainable and is not in accordance with the judgment and decree. The Court which granted decree cannot go behind the decree. The docket order dated 01.03.2019 directing delivery is without jurisdiction, and the learned Judge has not given reasons for ordering delivery of the entire property. The Lower Court has further directed break open and police aid without there being an occasion to seek the relief. In other words, the prayer for police aid and break open cannot be prayed for simultaneously. It is well settled that such prayers can be sought for only in the case where the aggrieved person is unable to get possession despite delivery is ordered due to some external agency or other reasons which had made the delivery improbable. Since, the Court has granted a decree for recovery of possession of 1/5th share, the Executing Court can give symbolic possession to the 1st respondent/plaintiff. Accordingly, the order passed the Court is valid to the extent of giving symbolic possession to the 1st respondent/plaintiff in respect of his 1/5th share which he is entitled in execution of the decree in



WEB COPY



CRP.(NPD).No.1071/2019

the Suit filed in O.S.No.89/1987. The revision petitioners have no objection as seen from records.

(12) Having regard to the admitted facts, the order passed by the learned II Additional District Munsif, Salem is liable to be set aside.

(13) In the result, the Civil Revision Petition is allowed and the order of the learned II Additional District Munsif, Salem made in REP.No.367/1999 is set aside granting liberty to the 1st respondent/plaintiff to work out his remedy in a manner known to law, to secure possession of the remaining 4/5th share as per the Sale Deed obtained by them from the other sharers. However, symbolic possession in respect of 1/5th share stands recorded. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.12.2021

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Internet : Yes

To

1.The II Additional District Munsif Court, Salem.



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CRP.(NPD).No.1071/2019

S.S.SUNDAR, J.,

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CRP.(NPD).No.1071/2019

21.12.2021