



C.R.P.No.2174 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No.2174 of 2019
and
CMP.No.14037 of 2019

Shanthi

... Petitioner

Versus

V.Shanmugha Gounder (died)

1.Kaliammal
2.Pechimuthu
3.Balasubramaniam
4.Nagaraj
5.Sundararajan
6.Anandakumar
7.Krishnasamy
8.Ganesh
9.Saraswathi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 08.01.2019 passed by the learned Subordinate Judge, Pollachi, in E.A.No.355 of 2012 in E.P.No.28 of 2010 in O.S.No.7 of 2001 and allow the revision.

For Petitioner : Mr.S.Saravanan

For Respondent

For R1 to R8 : Mr.J.Hariharan

For R9 : No such Addressee



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ORDER

The revision petitioner is challenging the order dated 08.01.2019, passed by the learned Subordinate Judge, Pollachi, in E.A.No.355 of 2012 in E.P.No.28 of 2010 in O.S.No.7 of 2001.

2. The revision petitioner herein is the plaintiff in O.S.No.7 of 2001 on the file of the learned Subordinate Judge, Pollachi, filed a suit for the relief of specific performance against the defendant Saraswathy and the said suit was decreed as ex-parte on 06.07.2004. Thereafter, to execute the decree, in E.P.No.50 of 2007. In that proceedings also, the defendant remained ex-parte, and thereafter, the sale deed was executed through Court on 22.10.2008.

3. Based upon that decree, the sale deed was executed in favour of the plaintiff and to get delivery of possession of the property, she filed E.P.No.28 of 2010. During the pendency of the said E.P, 3rd party / claimants / respondents filed an application under Order 47 r/w Section 51 of CPC in I.A.No.355 of 2012 claiming their right over the property and also submitted



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their objection to take delivery of possession based upon the sale certificate dated 20.12.2007, which was issued in their favour as per Court auction held in suit O.S.No.248 of 2000 on the file of Principal District Court, Coimbatore. The said claim application was strongly objected by the plaintiff, but on hearing both sides, the Execution Court based upon the sales certificate stands in the name of the claimant granted the relief. Aggrieved by the said order, the plaintiff has preferred this revision.

4. At the time of the arguments, the learned counsel for the revision petitioner submitted that, based upon the registered sale agreement dated 20.12.1999, the plaintiff has filed a suit for specific performance and obtained the decree and also got the sale deed through Court. But the claimants (who are colluded) claimed right over the property by collusively conducted the suit as well as Execution proceedings concerned with O.S.No.248 of 2000. Therefore, he strongly raised the objection with regard to genuineness and the validity of the sale certificate in the name of the claimant Shanmugam. He also stated that the said Shanmuga Gounder is the father of the plaintiff in O.S.No.248 of 2000 and with an intention to grab the property, the claimant / father took auction of the said property colluded with other persons.



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5. But, on a perusal of the records, it reveals that, the sale deed was issued in favour of the claimant Shanmuga Gounder (Now he died). The sale certificate was issued in favour of the Shanmuga Gounder on 20.12.2007 by the Court, confirming the sale in E.P.No.28 of 2010 arising out of execution application filed by Anandakumar. It is also noted by the Court that the defendant in the Suit namely Saraswathy also remained ex-parte. Now in respect of the suit properties, another sale deed was executed through the Court in the name of the present plaintiffs. But admittedly, the properties already attached in the earlier suit filed by Ananda Kumar and as per the contention of the claimants, they are in possession of the property.

6. On a perusal of the records, it reveals that, while the Court Amina went to the suit property to execute the decree and to take delivery thereof, it was objected by the claimants, contending that they are in possession of the property. Therefore, the objection raised by the claimants is sustainable for the reason that they claimed title over the property based upon the sale certificate issued by the Court in O.S.No.248 of 2000. But, at the same time, the plaintiff, in present suit also obtained the sale deed subsequently through the Court by implementing the specific performance decree passed in the suit



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filed by her in O.S.No.7 of 2001. Since both the parties are claiming right over the property by approaching Civil forum, the objection raised by the claimants is sustainable one because their possession was based upon the sale certificate.

7. But the learned counsel for the revision petitioner submitted that by obtaining the collusive auction, the claimants claimed right over the properties. But he has to prove those aspects only before the Civil forum. Therefore, objection raised by the claimants is sustainable. To that effect alone, the order passed by the learned trial Judge in E.A.No.355 of 2012 in E.P.No.28 of 2010 in O.S.No.7 of 2001 is confirmed and liberty is given to the revision petitioner to approach the right forum to get appropriate remedy.

8. In view of the above, this revision petition is disposed of. Consequently connected Miscellaneous Petition is Closed.

29.10.2021

Internet : Yes / No

Index : Yes / No

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T.V.THAMILSELVI, J.

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To

- 1.The Principal District Judge,
Coimbatore.
- 2.The Section Officer,
V.R.Section, High Court of Madras.

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and
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