

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.Nos.1918 & 1919 of 2014 and
CMP.No.13231 of 2020

CRP.NPD.No.1918 of 2014

S.D.Ashok Kumar

..Petitioner

Vs.

Maheswariammal

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 17.08.2012 passed by the learned District Munsif, Madurantakam, Kancheepuram District in EA.No.188 of 2010 in EP.No.37 of 2008 in OS.No.389 of 1996.

For Petitioner : Mr.N.Nagu Sah

For Respondent : Mr.K.Goviganesan

CRP.NPD.No.1919 of 2014

S.D.Ashok Kumar

..Petitioner

Vs.

Maheswariammal

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the petition and docket order dated 17.08.2012 passed by the learned District Munsif, Madurantakam, Kancheepuram District in EP.No.37 of 2008 in OS.No.389 of 1996.

For Petitioner : Mr.N.Nagu Sah

For Respondent : Mr.K.Goviganesan

COMMON ORDER

The present Civil Revision Petitions are arising out of order and decreetal order dated 17.08.2012 passed by the learned District Munsif, Madurantakam, Kancheepuram District in EA.No.188 of 2010 in EP.No.37 of 2008 in OS.No.389 of 1996 and the petition and docket order dated 17.08.2012 passed by the learned District Munsif, Madurantakam, Kancheepuram District in EP.No.37 of 2008 in OS.No.389 of 1996.

2. Both the civil revision petitions have been filed as against the order passed in EA.No.188 of 2010 in EP.No.37 of 2008 thereby dismissing the petition filed to seeking time for the payment of the balance sale consideration and the fair and decreetal order passed in main EP.No.37 of 2008.

3. In both the civil revision petitions, the petitioner is the decree holder. The petitioner filed suit for specific performance as against the respondent. According to the petitioner, the petitioner and the respondent entered into an agreement for sale for purchasing the suit schedule property for the total sale consideration of Rs.6000/-, in which a sum of Rs.5000/- was paid as an advance. The suit was decreed in his favour by the judgment and decree dated 02.01.1997. Thereafter at the verge of limitation of 12 years, the petitioner filed execution petition on 06.03.2008 for execution of the decree. In the execution petition, he filed EA.No.188 of 2010 seeking grant of time for payment of balance sale consideration of Rs.1,000/-. The petition as well as the main EP were dismissed by the court below.

4. The learned counsel for the petitioner would submit that though the trial court did not fix particular time for payment of balance sale consideration, the petitioner paid balance sale consideration of Rs.1,000/- as early as on 10.03.1997 and the respondent also duly acknowledged and issued receipt for a sum of Rs.1,000/-. Unfortunately, the petitioner misplaced the original receipt and as such by way of abundant caution, the petitioner filed petition to grant time for payment of balance sale consideration as directed by the trial

court. While pending this revision petition, the original receipt for the payment of balance sale consideration was traced out by the petitioner and he filed petition to receive additional document namely the receipt dated 10.03.1997. In this regard, he relied upon the judgments in the case of **Asha Rani Vs. Jarbar Singh** reported in **2020 (6) PLR 314** and in the case of **PKMS Jailani Beevi Vs. J.Madan Lal** reported in **2001 (2) CTC 22** in respect of receipt of additional documents in the civil revision petition.

5. Per contra, the learned counsel for the respondent would submit that though the trial court did not fix time for paying balance sale consideration, the petitioner ought to have paid the sale consideration within a reasonable time. Admittedly, he did not pay the balance sale consideration till the year 2010. Though the petitioner filed execution petition in the year 2008, he took out an application for grant of time for payment of balance sale consideration only in the year 2010. Therefore, the execution petition itself is not maintainable and the court below rightly dismissed the same. In fact EA.No.188 of 2010 was filed for further time to pay balance sale consideration is barred by limitation since the petitioner failed to pay balance sale consideration for more than 12 years from the date of decree. He

further submitted that the interim petition filed before this Court to receive additional document such as alleged receipt issued by the respondent dated 10.03.1997 for receipt of balance sale consideration of Rs.1,000/- under Order 47 Rule 27 of CPC is not applicable for the petitioner to file this petition to receive additional document. The civil revision petition is filed under Section 115 of CPC and it does not contemplate any power to this Court to receive any additional document. Order 47 Rule 27 of CPC contemplates only appeal court not in the revision court. Therefore, the said petition to receive additional document is not at all maintainable and it is liable to be dismissed. In fact the petitioner already filed execution petition and the same was dismissed. Without filing any appeal, aggrieved by the said order, again he filed the execution petition in EP.No.37 of 2008.

6. Heard Mr.N.Nagu Sah, the learned counsel for the petitioner and Mr.K.Goviganesan, the learned counsel for the respondent.

7. The petitioner is the decree holder. The petitioner is the plaintiff and he filed suit for specific performance. The suit was decreed in his favour. In the suit, the respondent was called absent

and set exparte and exparte decree was passed. According to the plaintiff, the total consideration was Rs.6,000/- for the suit schedule property in which he paid a sum of Rs.5,000/- and balance Rs.1,000/- to be paid at the time of registration of sale deed. Though the court below decreed the suit and did not fix any time for payment of balance sale consideration. The suit was decreed by the judgment and decree dated 02.01.1997 On the strength of the said decree, the petitioner filed execution petition only on 06.03.2008.

8. Even according to the petitioner, he did not pay the balance sale consideration of Rs.1,000/- as directed by the trial court to the respondent herein. After period of two years from the execution petition, the petitioner filed EA.No.188 of 2010 seeking time for payment of balance sale consideration. The affidavit filed in support of the said petition revealed that "the execution petition is posted for filing draft sale deed. The draft sale deed was already filed and it was returned as balance sale consideration has not paid. After verifying the court records balance sale consideration was not paid due to oversight". In fact, the decree time was already lapsed. Therefore, he filed petition for granting time for payment of balance sale consideration.

9. On perusal of the records, revealed that the petitioner already filed execution petition in EP.No.113 of 2001 which was dismissed on 25.02.2014. Even then, the petitioner failed to pay balance sale consideration as directed by the trial court. On the other hand, the petitioner filed petition before this Court for receiving additional document i.e. receipt dated 10.03.1997 for the receipt of balance sale consideration by the respondent herein. In the said application, the petitioner filed affidavit and stated that he was ready and willing to pay balance sale consideration of Rs.1,000/- to the respondent immediately after decree passed by the trial court. Accordingly he paid balance sale consideration of Rs.1,000/- on 10.03.1997 and the same was duly acknowledged by the respondent herein. After receipt of entire sale consideration the respondent was asking time in executing and registering sale deed in his favour. At that juncture, he was suffered with acute diabetic and fell ill and bedridden for a long time. Therefore, the petitioner could not able to file execution petition immediately. Therefore, the petitioner took a different stand in both the affidavits i.e. at the time of filing petition to grant time for paying balance sale consideration and in the present affidavit stating that already sale consideration was paid, due to his ill

health, he could not file execution petition in time. Both the statements are quite contradictory in nature. While pending the present civil revision petition, the petitioner filed the same. Further, the revisional court has no power to receive additional document. Therefore, the above judgments are not applicable to the case on hand.

10. On perusal of the receipt dated 10.03.1997, it is prepared only with old paper with old ink whereas the signature of the respondent was put in the new ink. The said signature also completely differs from the signature put in the present vakalat as well as the counter filed by the respondent herein. Further, the reception of additional documents is not permissible under law in the civil revision petition. Since the petition filed under Order 47 Rule 27 of CPC which contemplates only additional document can be received before the appellate court. The present civil revision petition is filed under Section 115 of CPC which contemplates only for this Court as a revision court. That apart, the petition for granting time for payment of balance sale consideration is barred by limitation since it was filed after period of 12 years from the date of decree. Though the trial court did not fix time for payment of balance sale consideration, the limitation for filing

execution petition is only for 12 years. Therefore, the trial court rightly dismissed the petition as well as the main execution petition and this Court finds no infirmity or illegality in the orders passed by the court below.

11. Accordingly, these civil revision petitions are dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif, Madurantakam, Kancheepuram District



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