

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2048 of 2021
and C.M.P. No.15580 of 2021

Muthuvenkatachalam

...

Petitioner /
Judgment Debtor

versus

Bhaskarane (died)

1.Sathiya

2.Sabitha

3.Diviya

4.Dinakaran (Late Minor)

...

Respondents /
Decree Holders

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 28.06.2021 made in E.A.No.30 of 2019 in E.P.No.165 of 2017 in O.S.No.334 of 2004 on the file of the learned Additional Sub-Judge, Puducherry, thereby allowing this Civil Revision Petition.

For Petitioner

: M/s.G.Sumitra

For Caveators

: Mr.P.Dinesh Kumar

ORDER

This Civil Revision Petition is filed to set aside the order dated 28.06.2021 passed by the learned Additional Sub-Judge, Puducherry in E.A.No.30 of 2019 in E.P.No.165 of 2017 in O.S.No.334 of 2004.

2. The learned counsel for the petitioner submitted that, one Bhaskarane filed the suit for specific performance of the Sale Agreement. In the said suit, a decree was passed directing the defendant in the suit to execute the registered Sale Deed in favour of the plaintiff on payment of balance consideration. It is the further submission of the learned counsel for the petitioner that, the plaintiff prayed for execution of the registered Sale Deed and to delivery of possession of the property. However, no order was passed with regard to the delivery of possession of the property. In pursuance of this decree, the respondents filed E.P.No.140 of 2008 for execution of the Sale Deed and the Sale Deed was executed. Subsequently, the legal representatives of Bhaskarane filed E.P.No.165 of 2017 for delivery of possession of the suit property. She further submitted that in the absence of specific decree of possession, E.P. for delivery cannot be

maintained. One another submission is that, when already an E.P. was filed for execution of Sale Deed, another E.P. for delivery cannot be filed. It is reiterated that when, the relief of delivery of possession was asked and that was not granted, the delivery of the property can be granted in this E.P.

3. In response, the learned counsel for the respondents submitted that, in a suit for specific performance, the relief of delivery of possession, is inherent and part of a decree. There is no specific relief need to be asked with regard to the delivery of possession and in the said circumstances, the objection raised by the learned counsel for the petitioner, cannot be entertained.

4. Considered the rival submissions and perused the records.

5. The reading of the order of the learned trial Judge shows that, the learned Judge relied on the judgment of this Court in

S.S.RAJABATHAR vs. N.A.SAYEED reported in ***AIR 1974 Mad.289***,

wherein it was held that;

"A direction to deliver possession of the property is incidental to a decree for specific performance of an agreement to sell immovable property, and, therefore, the executing court has jurisdiction to delivery of possession, although the decree in the suit for specific performance does not provide for delivery of possession. It can not be said that in such a case the executing Court cannot go behind the decree and order delivery of possession.

The Executing court has jurisdiction to grant the relief of possession as incidental to the execution of the decree for specific performance of a Contract of Sale."

6. Thus, it is observed in this order that in any suit for specific performance, the direction to delivery of possession for specific performance is incidental although the decree does not provide for delivery of possession. This judgment has squarely applies in the facts and circumstances of this case. Though the prayer for delivery was asked and it was not granted obviously due to some mistake or omission, following the above said judgment of this Court, this Court finds that the order of the learned Additional Sub-Judge, in dismissing the petition under Section 47 of C.P.C. is right and there is no reason to interfere with the order of the

learned Additional Sub-Judge, and the order dated 28.06.2021 passed in E.A.No.30 of 2019 in E.P.No.165 of 2017 in O.S.No.334 of 2004 , is hereby confirmed. Instead of filing separate Execution Petition, the learned counsel for the respondents could very well have filed an application in the Execution Petition for delivery. However, it is only a technical defect and the respondents cannot be penalised for this.

7. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

27.09.2021

Speaking order / Non-speaking order
Index : Yes / No

sri

To
The Additional Sub-Judge,
Puducherry.

G.CHANDRASEKHARAN, J.

sri



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