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C.R.P.(NPD).No.2502 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2502 of 2021

and

C.M.P.No.18851 of 2021

A.Latha

.. Petitioner

Vs.

1.S.Elamaran

2.Habibunniasa Begam

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order passed by the learned Sub-Judge, Nagapattinam in unnumbered E.A.No.-- of 2021 in E.P.No.91 of 2019 in O.S.No.63 of 2002 dated 15.09.2021 and allow the above C.R.P.

For Petitioner : Mr.S.Parthasarathy



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ORDER

The petitioner, aggrieved by the rejection of his application filed under Section 47 of the Code of Civil Procedure has come up with this Revision.

2. A suit for specific performance was filed by the 1st respondent against the petitioner and the 2nd respondent. The trial Court granted the alternative relief of refund of advance while dismissing the suit for specific performance. An appeal was filed by the plaintiff in A.S.No.101 of 2003. The said appeal came to be dismissed on 05.03.2004. The plaintiff carried the matter to this Court by way of a second appeal in S.A.No.1497 of 2004. The second appeal was allowed on 29.06.2018 granting a decree for specific performance.

3. E.P.No.91 of 2019 was filed by the decree holder viz., 1st respondent seeking execution of the said decree. The petitioner filed an application under Section 47 of the Code of Civil Procedure seeking a declaration that the decree is a nullity on the ground that the plaintiff had not sought for setting aside the sale in her favour that had taken place prior



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to the filing of the suit. The petitioner claimed to have purchased the property on 06.06.2002. The plaintiff claimed specific performance under the agreement of sale dated 03.05.2001. The sale in favour of the petitioner is after the agreement, but, before the suit.

4. The course of action available to the agreement holder in such cases was decided by the Hon'ble Supreme Court in ***Durga Prasad Vs. Deep Chand*** reported in ***AIR 1954 SC 75***, wherein, the Hon'ble Supreme Court had held that it will be open to the plaintiff to implead the purchaser after the agreement and seek execution of the sale deed by him. The necessity for either setting aside the sale in favour of the subsequent purchaser or seeking a declaration that subsequent purchase is invalid is not warranted. In fact the Hon'ble Supreme Court upheld the practice of the Madras High Court.

5. Moreover, I am of the considered opinion that the contentions raised, even if they are correct, cannot be raised in application under Section 47 of the Code of Civil Procedure. The Hon'ble Supreme Court in



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Dhurandhar Prasad Singh Vs. Jaiprakash University and others reported

in **2001 (6) SCC 534**, had held that the scope of Section 47 of the Code of Civil Procedure lies in a very microscopic examination hole and will not encompass a ground that can be taken in an appeal against the judgment.

6. Hence, I do not find any merits in this Revision. The execution Court was justified in rejecting the application under Section 47 of the Code of Civil Procedure. The Revision therefore, fails and it is **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

23.11.2021

dsa

Index : No

Internet : Yes

Speaking order

To

The Sub-Judge, Nagapattinam.

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R.SUBRAMANIAN, J.

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