



C.R.P. (NPD) No.3012 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM :

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P. (NPD) No.3012 of 2019

and

C.M.P.No.19426 of 2019

Malliga

... Revision Petitioner

Vs.

T.Thangavel

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Decreetal order in E.P.No.24 of 2018 in O.S.No.269 of 1999 dated 16.08.2019 on the file of the Subordinate Court, Kangayam, Tiruppur District.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.K.Govi Ganesan

ORDER

(Through Video Conferencing)

This Civil Revision Petition is filed challenging the order passed in E.P.No.24 of 2018 in O.S.No.269 of 1999, dated 16.08.2019, on the file of the Subordinate Court, Kangayam, Tiruppur District.



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2.The revision petitioner herein is the defendant in the suit, O.S.No.269 of 1999, filed by the respondent/plaintiff for the relief of specific performance, directing the defendant to execute the sale deed as per the alleged sale agreement, on the file of the Sub-Court, Dharapuram, Tiruppur District. The defendant remained *ex parte* and an *ex parte* decree was passed on 28.03.2001. Thereafter, to execute the decree, the plaintiff filed E.P.No.94 of 2010 on the file of the Sub-Court, Dharapuram, which was subsequently transferred to the file of Sub-Court, Kangayam, and renumbered as E.P.No.24 of 2018. In that Execution proceedings, the plaintiff prayed for delivery of possession of the property. In E.P.No.169 of 2003, the plaintiff got execution of sale deed and after that, he filed the said Execution Petition for delivery of possession. In that application, the son of the defendant filed a claim petition in E.A.No.114 of 2012 and on hearing both sides, the Executing Court, removing the 1/4th share of the claimant in the two-tier house, ordered delivery for the remaining portion on 16.08.2019. Aggrieved by that order, the Judgment Debtor/defendant preferred this Revision.



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3.The revision petitioner contended that, as an illiterate woman, no notice was properly served on her and only as a surety for the money transaction, the alleged sale agreement came into force. Though there is valid defence to defend her claim, no proper notice was served on her and she remained *ex parte*. She is ready to contest her claim before the trial Court and pointed out that the order passed by the Executing Court is not maintainable in law for the reason that there was no decree for delivery of possession.

4.But, at the time of the arguments, the learned counsel for the respondent/plaintiff would submit that the defendant purposely evaded the Court summons and remained *ex parte*. Apart from that, her son filed the claim application, which proves that she is having the knowledge about the entire suit proceedings, but to drag on the proceedings, she filed this fictitious Revision and prayed to dismiss the same as there is no merit.

5.A perusal of the entire materials reveals that, in the suit as well as the execution proceedings, the defendant remained *ex parte*. As per the



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contention of the revision petitioner, no notice was served on her properly.

Furthermore, as per the submission made by the learned counsel for the respondent, property was delivered as per the decree, on 09.09.2021. But, as rightly pointed out by the learned counsel for the revision petitioner, this Civil Revision Petition was taken on file on 06.09.2019 and notice was also ordered to the respondent/plaintiff. On 25.11.2019, this Court granted extension of interim orders until further orders. Therefore, as on date, there is a stay of the Execution Proceedings, but as per the submission made by the learned counsel for the respondent, property was delivered on 09.09.2021. In spite of the stay of further proceedings, the Court below ordered for delivery of possession, which is unsustainable.

6. Furthermore, a decree to execute the sale deed alone was granted in favour of the plaintiff and there is no prayer in the plaint with regard to the consequential relief of delivery of possession from the defendant and there was no such relief for delivery of possession granted in favour of the plaintiff. When there is no decree for delivery of possession, the Executing Court should not have passed the order for delivery of possession. Therefore, the entire Execution Proceedings in E.P.No.24 of 2018 is



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initiated with abuse in process of law. Therefore, the said proceedings is liable to be set aside, accordingly, delivery of possession ordered by the Executing Court is set aside. The revision petitioner is directed to approach the right forum to get appropriate relief.

Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2021

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

1.The Sub-Judge,
Kangayam,
Tiruppur District.

2.The Sub-Judge,
Dharapuram,
Tiruppur District.



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T.V.THAMILSELVI, J.

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