

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.3881 of 2018

M/s.Expansia Projects & Development Private Limited,
2nd Floor, Shoba Pearl, No.1, Commissioner Road,
Bangalore - 560 025.

Represented by W.Arikianathan,
S/o.William,
No.19/3, P.B.Gurkha Company,
Wellington, Coonoor - 643 231.

.... Petitioner

Vs.

1.Muniraj
2.Veerabathira

.... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order dated 11.06.2018 passed in R.E.A.No.27 of 2014 in R.E.P.No.03 of 2014 in O.S.No.14 of 2013 by the District Munsif cum Judicial Magistrate Court, at Danganikottai.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents : Mr.V.Lakshmi Narayanan

ORDER

This Revision is directed against the Fair and Decreetal Order passed by the learned District Munsif cum Judicial Magistrate, Danganikottai in R.E.A.No.27 of 2014 in R.E.P.No.03 of 2014 in O.S.No.14 of 2013, dated 11.06.2018.

2. The brief facts of the case are that the respondents 1 and 2 herein viz., Muniraj and Veerabathira filed the suit in O.S.No.14 of 2013, against the defendant-Rajamma, for specific performance. It is the case of the plaintiffs that the suit property measuring an extent of Acre 1.81 1/2 cents in S.No.370/A1 belong to the defendant Rajamma. On 31.12.2012 she agreed to sell the property to the plaintiffs for a sale consideration of Rs.40,000/- and on the date itself, entire sale consideration was paid. The plaintiffs were also put in possession of the suit property. When the plaintiffs were always ready and willing to get a sale deed executed in their favour, the defendant was postponing the execution.

3. It is not in dispute that the sole defendant did not take part in the suit proceedings and an ex-parte Decree came to be passed on 22.03.2013. The learned District Munsif cum Judicial Magistrate,

Denganikottai executed a sale deed in favour of the plaintiffs on 20.09.2013. Thereupon, R.E.P.No.3 of 2014 was filed by the plaintiffs/Decree Holders for delivery of possession of the suit property. It appears the Ammin with the help of the Village Administrative Officer and Surveyor visited the property on 09.08.2014, but he could not execute the warrant and the same was returned with an endorsement that the property is situated in two different places and there is no clarity with regard to the extent of the suit property.

4. At that stage, the petitioner herein/third party moved an Application in R.E.A.No.27 of 2014 under Section 47 of C.P.C. contending that the defendant Rajamma was not the owner of the suit property and the suit was a collusive one. It is further stated that the petitioner-Company is the absolute owner of the suit property.

5. The Application was resisted by the Decree Holders disputing the averments contained in the petition. It is their specific case that the suit property originally belong to Thimmarayadu and Chinna Munisamy of Samanattam Village. They sold the property to one Thimma Nayaka and executed a sale deed dated 08.07.1929. The said Thimma Nayaka had three

daughters and they have equal share in the suit property. One of the daughters viz., Earamma has given her property to the defendant-Rajamma. Thereby the defendant acquired title to the suit property.

6. During enquiry, the petitioner examined two witnesses and marked 15 documents. Exs.X1 to X3 were also produced. The respondent examined one Madevan as R.W.1 and marked Exs.Y1 and Y2. The Executing Court, however dismissed the application mainly on the ground that the petitioner is a third party to the proceedings. As per Section 47 of C.P.C., the third party cannot maintain the petition. It is further held that the suit was decreed on 22.03.2013, but the petitioner has not produced any materials to show when the Company purchased the property. It is also observed that the Executing Court cannot go beyond the Decree and the petitioner can work out its right at the time of delivery of possession of the property. Assailing the order, the present Revision has been filed.

7. Mr.K.Gandhi Kumar, learned counsel appearing for the petitioner would argue that the petitioner purchased the property under sale deed dated 04.07.2013, which was marked as Ex.X1. Despite the same, the Executing Court has held that the petitioner has not disclosed the date

of sale. He further added that the petition was entertained by the Executing Court, the parties were also permitted to lead evidence and when the petitioner claimed title over the property and produced relevant records to establish the same, it would not be proper to dismiss the application on the sole ground that the petitioner has quoted a wrong provision in the petition. According to the learned counsel, the plaintiffs and the defendant are the sons and mother respectively and the unregistered sale agreement was created to defeat the right of the petitioner. Since the petitioner has pleaded his case and produced evidence, it would be unnecessary to file another application when the Decree Holders are attempting to take possession of the property.

8. *Per contra* Mr.V.Lakshmi Narayanan, learned counsel appearing for the respondents 1 and 2 would submit that admittedly, the petitioner is a third party to the suit proceedings, hence, the petitioner has no *locus standi* to maintain the petition under Section 47 of C.P.C. Further, the petitioner has been given liberty to file necessary application at the time of taking delivery of the possession. He argued justifying the order of the Executing Court.

9. This Court carefully considered the rival submissions and perused the materials available on record.

10. In the instant case, the plaintiffs have specifically averred in the plaint that on 31.12.2012, the defendant agreed to sell the suit property for a value of Rs.40,000/- and she agreed to execute the sale deed within a period of 15 days after surveying the lands. The plaintiffs paid the amount of Rs.40,000/- on the same day itself and the possession of the land was delivered to the plaintiffs by the defendant.

11. Perusal of the records would reveal that the defendant remained ex-parte and the suit was decreed on 22.03.2003. A sale deed was also executed in favour of the plaintiffs by the Court on 20.09.2013. When it has been specifically averred in the plaint that the plaintiffs were put in possession of the property on the date of sale of agreement, the Court is unable to understand as to why R.E.P.No.3 of 2014 was filed for delivery of possession of the property. The endorsement made by the Bailiff shows that the property is situated in two different places and their extents were not mentioned. It is relevant to note that the petitioner claims to have purchased the property vide sale deed dated 04.07.2013 from one

Krishnendu Harza, who in turn purchased it from one Vijayakumar and 7 others under sale deed dated 18.06.2012.

12. It is the case of the petitioner that they are in possession and enjoyment of the same and an attempt was made by the Decree Holders to dispossess them under the guise of executing the Decree obtained in O.S.No.14 of 2013. As pointed out earlier, the parties had pronounced evidence to prove their case, however the petition was rejected mainly on the ground that the petition filed under Section 47 of C.P.C. is not maintainable, as the petitioner is a third party to the proceedings.

13. It is not disputed that an application under Section 47 of C.P.C. can be filed only by the parties to the suit, their legal heirs and their legal representatives. It is argued by the learned counsel for the petitioner that a third party can object delivery of possession and their right can be decided under Order 21 Rules 96 to 101 of C.P.C. Taking note of the fact that the parties have let in oral and documentary evidence and the petition was primarily rejected on the ground of maintainability, in order to render substantial justice to the parties, the order impugned in this Revision is set aside and the matter is remitted back to the Court below. The petitioner

shall file a petition within a period of two weeks to amend relevant provision of law. On such compliance, the Court shall permit the petitioner to amend the application. Thereupon, the Executing Court shall dispose of R.E.A.No.27 of 2014, as expeditiously as possible, preferably, within a period of eight weeks therefrom. It is made clear that the parties are at liberty to give additional evidence, if necessary.

14. Accordingly, this Civil Revision Case is allowed. There is no order as to costs.

16.08.2021

Index : Yes / No
Internet : Yes

Speaking order / Non Speaking Order

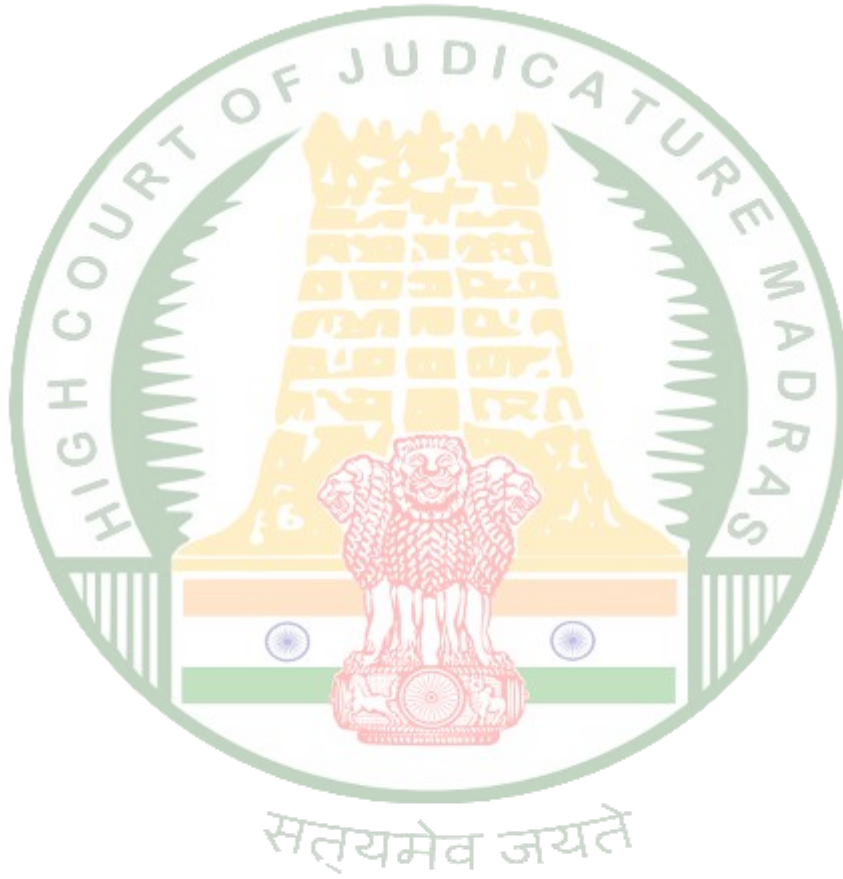
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To

The District Munsif cum Judicial Magistrate Court,
Denganikottai.

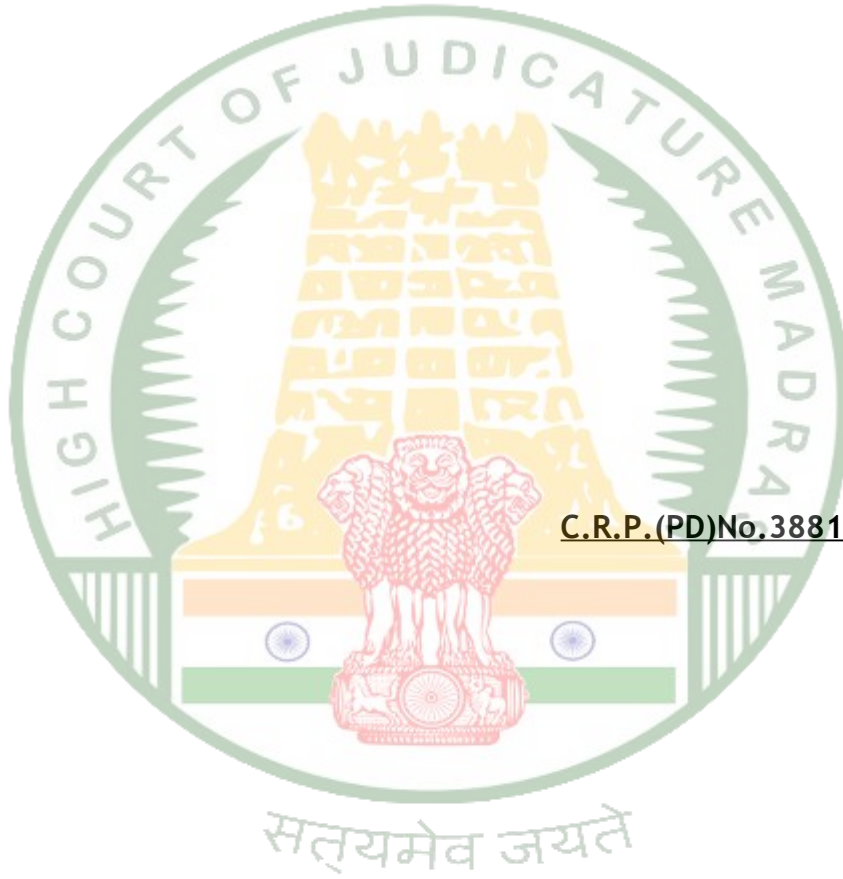


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