



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :27.04.2021

Pronounced on :30.04.2021

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CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.R.P (MD) (NPD) .No.1080 of 2012

Arumugham

...Petitioner/Petitioner/Plaintiff

-vs-

Krishnammal @ Kittu

...Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition is filed, under Section 115 of CPC, against the fair and decreetal order dated 7.12.2010 made in E.P.No.123 of 2008 in O.S.No.511 of 1998 by the Principal District Munsif Court, Nagercoil.

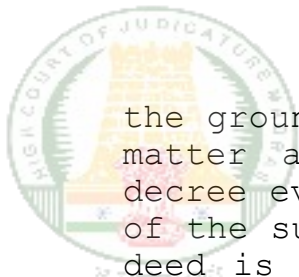
For Petitioner :Mr.S.Vasik Ali for Mr.R.Murugan
For Respondent :No appearance

O R D E R

1.This Civil Revision Petition has been filed, against the fair and decreetal order dated 7.12.2010 made in E.P.No.123 of 2008 in O.S.No.511 of 1998 by the Principal District Munsif Court, Nagercoil.

2.The Plaintiff is the Petitioner and the Defendant is the respondent. The suit was filed for recovery of vacant possession, for recovery of Rs.2600/- as arrears of rent from 01.06.1997 to 30.06.1998 and for recovery of Rs.200 per month as mesne profits from the date of plaint till recovery of possession. By judgement and decree, dated 12.02.2001, the suit was dismissed in respect of arrears of rent, but, in respect of recovery of possession, it was ordered that on receiving Rs.8500/- from the plaintiff, the suit property shall be handed over to him, within one month. The plaintiff had filed E.P.No.123 of 2008, which was dismissed, as not maintainable, by the impugned order, on the grounds that the petitioner had paid the said amount after two years after filing of the EP, ie. on 21.06.2010 and the said material fact was suppressed by the petitioner. As against the same, this revision has been filed.

3.The learned counsel for the petitioner has submitted that the Execution Court ought not to have refused to execute the decree on



the ground that the decree holder has lost interest in the subject matter and that the decree holder is entitled to execute the decree even if he has sold the property either during the pendency of the suit or subsequently and that production or marking of sale deed is immaterial at the time of execution of the decree. The learned counsel has relied on the decision of this Court reported in **2007 1 MLJ 484 (M.Baskaran, Gudiyatham Vs.M.Sabathy, Vellore) and 2007 1 MLJ 488 (Brick Steel Enterprises, Salem Vs. Superintending Engineer, Salem).**

- 4.This Court considered the submissions of the learned counsel for the petitioner and also perused the materials available on record.
- 5.On a perusal of records, it is seen that the decree was passed on 12.02.2001 and that the EP was filed on 16.09.2008. Further, it was alleged by the respondent that the suit property was sold.
- 6.It is stated in the impugned order that though the decree was passed on 12.02.2001, only after filing of the EP, the decree amount was deposited only on 21.06.2010 and hence, there was suppression of material fact and the execution petition was dismissed and the said finding, in the opinion of this court, is erroneous.
- 7.Further, it is settled position of law that the executing court cannot go beyond the decree and consider its correctness or validity, unless it is shown that the decree was passed by a Court having lack of jurisdiction.
- 8.Even though the interest of the properties were transferred by the decree holder to a third party transferee, until the name of the transferee is brought on record, the decree holder has got every right to execute the decree so long as his name continues to appear in the execution petition as if he is the party competent, **as has been held in 2010 1 CTC 109 (Venugopal Vs Meenammal).**
- 9.When an execution petition is filed, the judgement debtor, who is bound by the decree, is also bound to hand over possession of the suit property in the execution proceedings. Merely because the decree holder has sold the property to some third party during the pendency of the execution proceedings, but that does not mean that he is not entitled to continue the execution proceedings and recover possession of the suit property.
10. In view of the above reasons, this court is of the view that the impugned order, dismissing the Execution Petition, passed by the Execution Court, suffers from infirmity and perversity and hence, it is liable to be set aside.



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11.In fine, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1. The Principal District Munsif Court, Nagercoil.
 - 2.The Section Officer, V.R Section, Madurai Bench of Madras High Court , Madurai.
- +1 CC to M/s.R.MURUGAN, Advocate (SR-18176[F] dated 30/04/2021)

**Pre Delivery Order made in
C.R.P(MD) (NPD) .No.1080 of 2012
30.04.2021**

RP (17.05.2021) P 4C