



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	01.10.2021
DELIVERED ON	09.11.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(MD)No.1104 of 2021
and
C.M.P. (MD)No.6441 of 2021

M.Rajesh Panneer Kumar ... Petitioner/Respondent/Respondent/
Defendants

Vs.

T.Ponnarasu ...Respondent/Petitioner/Petitioner/
Plaintiff

PRAYER: Petition filed under Section 115 of Civil Procedure Code, to set aside the order passed in E.A.No.4 of 2020 in E.P.No.32 of 2011 in O.S.No.42 of 2006 dated 17.03.2021 on the file of the III Additional District Court, Tirunelveli by allowing this Civil Revision Petition.

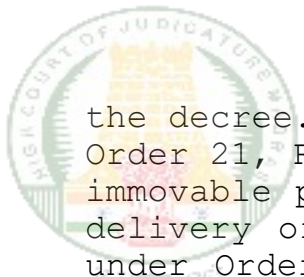
For Petitioner : Mr.H.Arumugam
For Respondent : Mr.V.Meenakshi Sundaram, for
Mr.Navaneetha Raja

O R D E R

The Civil Revision Petition has been filed to set aside the order, dated 17.03.2021 in E.A.No.4 of 2020 in E.P.No.32 of 2011 in O.S.No.42 of 2006 passed by the learned III Additional District Judge, Tirunelveli.

2.The respondent herein/plaintiff has filed an application in E.A.No.4 of 2020 in E.P.No.32 of 2011 in O.S.No.42 of 2006 under Order 21 Rule 35 of C.P.C., to deliver the suit property, on the file of the learned III Additional District Judge, Tirunelveli, the same was allowed on 17.03.2021. Against the said order, the revision petitioner is before this Court.

3.This Civil Revision Petition has been filed on the ground that the Court below has failed to consider that relief of delivery of property was not prayed in the suit and no decree passed for delivery of possession, hence the Executing Court cannot go beyond



the decree. The Court below has failed to properly appreciate under Order 21, Rule 35 of C.P.C., which clearly says 'decree for delivery immovable property' and in the present case, there is no decree for delivery of immovable property, hence the respondent cannot invoke under Order 21, Rule 35 of C.P.C. The Court below has failed to consider that the petitioner's wife has filed a suit in O.S.No.24 of 2019 on the file of the III Additional District Court, Tirunelveli to declare that the property is absolutely belongs to her and the same is pending.

4.Heard Mr.H.Arumugam, learned counsel appearing for the petitioner and Mr.V.Meenakshi Sundaram, for Mr.Navaneetha Raja, learned counsel appearing for the respondent. Perused the material documents available on record.

5.The respondent herein/plaintiff has filed a suit in O.S.No.42 of 2006 to direct the petitioner herein/defendant to execute a cancellation deed cancelling the sale deed, dated 15.05.2006 for Rs.95,000/-obtained by the defendant in Document No.514 of 2006 of the Office of the Sub-Registrar, Kalakad, within a day fixed by this Court failing which to execute the same through this Court.

6.The suit was decreed. To execute the cancellation deed, a petition in E.P.No.32 of 2011 in O.S.No.42 of 2006 was filed and the same was dismissed on the ground that the wife of the petitioner/defendant has purchased the property from the respondent herein/plaintiff.

7.The petitioner/defendant has filed an appeal in A.S.No.261 of 2009 and the same was partly allowed and allowed the prayer for cancellation of sale deed. S.L.P. was filed and the same was dismissed. Review Petition was also filed and the same was also dismissed.

8.Against the dismissal order in E.P.No.32 of 2011, the respondent/plaintiff has filed an appeal before this Court. After elaborate discussion, dismissal order in E.P was set aside by this Court.

9.The wife of the revision petitioner/defendant has filed an application in E.A.No.2 of 2019 under Section 47 of Civil Procedure Code to implead herself in the E.P. And the same was dismissed.

10. The respondent/plaintiff has filed an application in E.A.No.4 of 2020 under Order 21 Rule 35 for delivery of possession.

11.The wife of the petitioner/defendant has filed a suit in O.S.No.24 of 2019 and the same is also pending.

12.In E.P.No.32 of 2011, the respondent herein/plaintiff sought <https://hcservices.courts.gov.in/hcservices/> of sale deed as per decree. The sale deed also



cancelled on 10.02.2020 and the E.P. Was closed.

13.Now, E.P.No.4 of 2020 was filed for delivery of possession and allowed by the learned III Additional District Judge, Tirunelveli. Aggrieved by the order, the petitioner/defendant has filed this present revision.

14.The suit was filed for cancellation of sale deed. Decree was also passed for cancellation. E.P. Was filed for cancellation of sale deed and the E.P. was also closed. Now, the respondent/plaintiff has no right to file E.A. For delivery.

15.There is no decree for delivery of possession as per Order 21, Rule 35 of Civil Procedure Code. The ingredients of **Order 21, Rule 35 of Civil Procedure Code**, is extracted hereunder:

35.Decree for immovable property :-

"(1) Where a decree is for the delivery of any immovable property, possession shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf and if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum or other customary mode, at some convenient place, the substance of the decree.

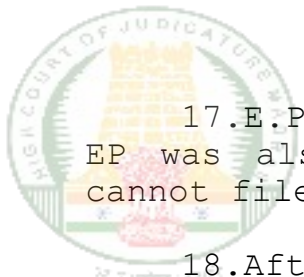
(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break upon any door or do any other act necessary for putting the decree holder in possession".

The order can be invoked when there is a decree of delivery of possession.

16.The contention of the petitioner/defendant is correct on the following grounds:

(a) There is no consequential prayer in the plaint for delivery of possession and Court fee also not paid by him.

(b) Decree is only for cancellation of sale deed.



17.E.P. Filed for cancellation of sale deed was also execution. EP was also closed. When E.P. itself was closed, the plaintiff cannot file E.A., for delivery for which there is no decree.

18.After decree, he executed a sale deed in favour of wife of the petitioner/defendant. Suit was also filed by the wife of the petitioner/defendant and the same is still pending.

19.In the Judgment reported in **(2007) 5 Supreme Court Cases 97** in the case of **Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar Vs. Rajwanti and Others**, wherein the Hon'ble Supreme Court held as follows:

.....
" 16.In Support of his aforesaid contention, Mr.Sanjay Sharawat, learned Advocate, referred to and relied on the decision of this Court in *State of Punjab V. Krishan Dayal Sharma*, wherein this Court has held that when no interest had been claimed in the suit itself, the grant of such interest by the executing court was illegal since the executing court is bound by the terms of the decree and it could not add to or alter the decree on its notion of fairness or justice.

17.The same view was taken by this Court in *State of Punjab V. Buta Singh* wherein in a suit for a mere declaration the executing court directed recovery of an amount which had not been granted by the decree. This Court held that such a direction given by the executing court was beyond its jurisdiction. "

20.In the Judgment reported in **(2019) 9 Supreme Court Cases 161** in the case of **S.Bhaskaran Vs. Sebastian (Dead) by Legal representatives and Others**, wherein the Hon'ble Supreme Court held as follows:

.....
" Civil Procedure Code, 1908 - Ss.47 and 115 - Exercise of power by executing court - Limitations on - It cannot travel beyond scope of decree/order - Any order passed by executing court by travelling beyond decree/order under execution would render such orders as without jurisdiction - High Court exercising revisional power by reappreciating evidence in proceedings arising out of execution - Permissibility of".

21.The paragraph Nos.17 & 18 of the Judgment reported in **1997 (3) CTC, 567**, in the case of **Renuka Devi Vs. D. Manoharan**, is extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>



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"17.Our High Court had an occasion to consider the scope of Section 151 C.P.C., in the case reported in Century Flour Mills Ltd. V. S.Suppiah and Anr., 1975 (1) MLJ 54 wherein a Full Bench of this Court has held that "the inherent powers of the High Court under Section 151 of the Code of Civil Procedure, are wide and are not subject to any limitation. "In that case, the Full Bench considered as to what orders should be passed in the case of a violation of the stay or injunction. It was held in that case, that "Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice."

18.Here, it is a case of fraud, and the person had taken advantage of his own fraud. When these facts are brought to the notice of the Court, can such a person be allowed to remain in possession with immunity and take advantage of his own fraud? If the Court refuses to act on that grievance, it only means, that it abdicates its duty, and it also perpetuates the fraud and injustice."

From the above, a fraud was committed in pending suit. Therefore, the aforesaid ruling is not applicable in the present case.

22.The respondent/plaintiff can file a suit for recovery of possession and after cancellation of sale deed if the limitation stands.

23.Finally, this Civil Revision Petition is allowed by setting aside the order, dated 17.03.2021 in E.A.No.4 of 2020 in E.P.No.32 of 2011 in O.S.No.42 of 2006 passed by the learned III Additional District Judge, Tirunelveli. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

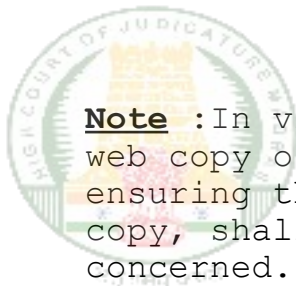
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

- 1.The III Additional District Court,
Tirunelveli.
- 2) The Section Officer, (2C)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-34183[F] dated 11/11/2021)

C.R.P (MD) No.1104 of 2021
09.11.2021

PS (CO)
KB(25.11.2021) 6P 5C