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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.12.2020
DELIVERED ON	18.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 2342 of 2015 (NPD)
and MP (MD) No. 1 of 2015

T. Shanmugam ...Petitioner/Appellant/Petitioner/Petitioner
3rd party/3rd party

vs.

Karuppasamy Chettiar (Died)

1. Chellamuthu

2. Kuppumuthu ...R-1 & 2/R-1 & 2/R-1 & 2/R-1 & 2 /
Petitioners/Plaintiffs

Gopalakrishnan (Died)

G. Shankaranarayanan (Died)

Ramanivel (Exonerated)

Chandramohan (Died)

3. Gnanasundaram

4. Amarnath

5. Mirulalini Devi

6. Mathura

7. Anuradha

8. C. Thilagam ...R-3 to 8/R-3 to 8/R-3 to 8/R-3 to 8/
Respondents/Defendants

(R3,R5 to R7 Dismissed vide order dated 15/12/2017)

PRAYER: Petition filed under Section 115 of C.P.C., to set aside the order, 04.02.2015 made in CMA No.28 of 2011 on the file of the Additional District & Sessions Judge, Dindigul by confirming the fair and decreetal order dated 20.06.2011 made in E.A. No.248 of 2011 in E.A. No.467 of 2007 in E.P. No.153 of 2001 in O.S. No. 10 of 1982 on the file of the Sub Court, Palani and to allow the same.

For Petitioner : Mr. K. Hemakarthiskeyan
For R-1 & R-2 : Mr. S. Anand Chandrasekar

**ORDER**

The Civil Revision Petition has been filed to set aside the order, dated 04.02.2015 made in CMA No.28 of 2011 on the file of the Additional District & Sessions Court, Dindigul by confirming the fair and decreetal order dated 20.06.2011 made in E.A. No.248 of 2011 in E.A. No.467 of 2007 in E.P. No.153 of 2001 in O.S. No. 1078 of 1982 on the file of the Sub Court, Palani and to allow the same.

2. A suit in O.S. No.10 of 1982 has been filed by one Late.Karuppasamy Chettiar for specific performance of agreement of sale, dated 20.03.1981 and for possession with Costs and the same was decreed against the defendants in the suit. Subsequently, after the demise of Late.Karuppasamy Chettiar, their legal heirs/R-1 & R-2 herein have filed a petition in E.P. No.153 of 2001 in O.S. No. 10 of 1982 and the same was allowed in favour of R-1 & R-2 herein/plaintiffs. The revision petitioner/objector/3rd party had filed an application in E.A. No. 249 of 2009 to declare the sale deed dated 06.04.2013 as null and void which was dismissed for default. To restore the E.A. No. 249 of 2009 the petitioner/objector has filed a petition in E.A. No. 365 of 2010 and the same was also dismissed for default. To restore the E.A. No. 365 of 2010 in E.A. No. 30 of 2011 filed which was dismissed for default. To restore the E.A.No. 30 of 2011 in E.P.--167 of 2011 was filed. E.A. No. 167 of 2011 was filed to restore the E.A. No. 31 of 2011(stay petition) With that E.A. No. 169 of 2011 was filed to stay proceeding in E.A. No. 467 of 2001. It was also dismissed for default. To restore the E.A. No. 169 of 2011 in E.A. No. 248 of 2011 was filed and the same was dismissed. Against the dismissal order in E.A. No. 248 of 2011, an appeal in C.M.A. No. 28 of 2011 was filed before the learned Additional District & Sessions Judge, Dindigul and the same was dismissed on 04.02.2015 on merits. Against the order this revision has been filed.

3. Heard the learned counsel appearing for the revision petitioner and the respondent Nos.1 & 2 and perused the material documents available on record.

4. The learned counsel appearing for the revision petitioner submitted that the Court below ought to have allowed the petition for restoration which was dismissed for non-payment of batta and ought to have permitted the petitioner to pay the batta. He further submitted that the Court below ought to have seen that the petitioner has filed claim petition in respect of suit property and without deciding the same on merits, the Court below had dismissed the application for restoration and ought to have provide an opportunity to the petitioner to put forth his contentions. He further submitted that the Court below ought to have seen that the petitioner's valuable rights are involved in the suit properties and ought to have given an opportunity to the petitioner by restoring the applications which were dismissed for non-payment of batta and ought to have decided the claim petition on merits. Hence, he prays to allow the Civil Revision Petition.



5. The learned counsel appearing for the respondent Nos.1 & 2 set out the contentions raised before the Court below and prays to dismiss the present Civil Revision Petition.

6. The revision Petitioner/Appellant/Petitioner/Petitioner/3rd party/3rd party has filed this Civil Revision Petition to set aside the order in CMA No. 28 of 2011 on the file of the learned Additional District and Sessions Judge, Dindigul by confirming the order, dated 20.06.2011 in E.A. No 248 of 2011 in E.A. No.467 of 2007 in E.P. No. 153 of 2001 in O.S. No. 10 of 1982 on the file of the Sub Court, Palani.

7. The R-1 to R-3 in Revision petition/plaintiffs had filed a suit in O.S. No. 10 of 1982 for specific performance. It was decreed. They filed EP No.53 of 2001 to execute the decree. In EP, the plaintiffs have filed a petition in E.A. No. 467 of 2007 for possession.

8. The revision petitioner/objector/3rd party had filed an application in E.A. No. 249 of 2009 to declare the sale deed, dated 6.04.2013 as null and void which was dismissed for default. To restore the E.A No. 249 of 2009 the petitioner in E.A. No. 365 of 2010. It was also dismissed for default. To restore the E.A. No. 365 of 2010 in E.A. No. 30 of 2011 filed which was dismissed for default. To restore the E.A.No. 30 of 2011 in E.P.--167 of 2011 was filed. E.A. No. 167 of 2011 was filed to restore the E.A. No. 31 of 2011(stay petition) With that E.A. No. 169 of 2011 was filed to stay proceeding in E.A. No. 467 of 2001. It was also dismissed for default. To restore the E.A. No. 169 of 2011 in E.A. No. 248 of 2011 was filed and the same was dismissed.

9. Against the dismissal order, in E.A. No. 248 of 2011 C.M.A. No. 28 of 2011 was filed before the learned Additional District and Sessions Judge, Dindigul. It was dismissed on 04.02.2015 on merits. Against the order, this revision was filed.

10. In terms of order passed in E.P. No. 143 of 2001 sale deed was executed on 16.04.2003. Then R-2 & R-3 had filed E.A.No. 467 of 2007 for delivery. The revision petitioner had filed petition and after petition not interested in conducting the petitions. All the petitions were dismissed for default. EP also closed as delivery was effected.

11. Therefore, the petitioner/3rd party had filed the petition after petition to drag on the Execution Proceeding. Therefore, the Sub Court and Additional District and Sessions Court, rightly dismissed the E.A. & CMA. Thus, the Court has no valid reason to interfere with the order.

12. Finally, the Civil Revision Petition stands dismissed with Costs and the order dated, 04.02.2015 made in CMA No.28 of 2011



passed by the learned Additional District & Sessions Judge, Dindigul is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (CS II)

/ /2021

Sub Assistant Registrar (CS)

ksa

To

1) The Additional District & Sessions Judge, Dindigul.

2) The Subordinate Judge, Palani.

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.K.HEMA KARTHIKEYAN, Advocate (SR-1071[F] dated 19/01/2021)

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-1038[F] dated 19/01/2021)

C.R.P. (MD) No. 2342 of 2015 (NPD)

18.01.2021

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kmk (CO)

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