





ORDER

This Civil Revision Petition has been preferred challenging the order of the learned II Additional Subordinate Judge, Coimbatore, dated 10.12.2021 made in E.P.No.220 of 2007 in O.S.No.680 of 1985.

2. The revision petitioner and the respondents 2 to 4 are the judgment debtors, who suffered the decree in O.S.No.680 of 1985. The 1st respondent decree holder has filed the suit in O.S.No.680 of 1985 for the relief of specific performance. The suit was decreed on 06.10.1989 in her favour. Thereafter, an appeal in A.S.No.1149 of 1990 was preferred before the trial Court and the same was dismissed on 22.03.2006 by granting a time of 8 weeks to pay the balance sale consideration. The S.L.P. filed by the defendants also dismissed on 27.11.2009.

3. Subsequent to the finality of the decree, execution proceedings were initiated in E.P.No.220 of 2007 and in which the learned Executing Judge passed an order on 10.12.2021 by giving direction to execute the Sale Deed. Aggrieved over that, the petitioner has filed this Civil Revision Petition.



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4. The learned counsel for the petitioner submitted that in compliance of the direction of the Court, the decree holder has not deposited the amount within time; and in view of fact that the revision petitioner has filed a petition under Section 28 of the Specific Relief Act to rescind the decree; if the Executing Court passes an order to execute the Sale Deed before the disposal of the said petition, the petition filed under Section 28 of the Specific Relief Act would become infructuous and hence, the order should be set aside.

5. On perusal of the judgment passed on 22.03.2006 in A.S.No.1149 of 1990, the first appellate Court has held as under;

“14. There is no merit in the appeal and the same is dismissed. No costs. The time for deposit of balance of sale consideration by the plaintiff is eight weeks from today and the sale deed is to be executed within four weeks from the date of deposit.”

6. Even before the said order, the decree holder has deposited the balance sale consideration of Rs.1,29,000/-. In fact, even on the day when the judgment was made in the first appeal i.e. on 22.03.2006



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the balance sale consideration of Rs.1,29,000/- was lying in the trial Court deposit. The contention of the learned counsel for the petitioner is that by virtue of the permission granted by the High Court, the judgment debtors had withdrawn sale amount deposited in the Court and hence, it cannot be taken that the decree holder has complied the condition as directed in the first appeal. The learned counsel for the petitioner drew the attention of this Court to the following judgments;

1. P.R.YELUMALAI vs. N.M.RAVI reported in (2015) 9 SCC 52
2. M.ELUMALAI vs. DEVI @ PERUNDEVI reported in CDJ 1991 MHC 478

7. In the judgment of the Hon'ble Supreme Court in ***P.R.YELUMALAI vs. N.M.RAVI*** reported in (2015) 9 SCC 52, it is held that the non-compliance of the condition would render the decree as nonest. There is no quarrel on the point that the non-payment of the balance sale consideration in terms of the conditional decree would make the decree holder lose the benefits of the decree.



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8. In *M.ELUMALAI vs. DEVI @ PERUNDEVI* reported in *CDJ 1991 MHC 478*, this Court has held that the judgment debtor is entitled to the interest on the amount deposited in the Court. But the judgment has to be read in the context of its own facts.

9. Here, it is a case where the decree holder had deposited the balance sale consideration even before the direction of the Court as early as on 03.11.1989. The interest accrued until in the year 1995 has been withdrawn by the judgment debtors only in accordance with the order of the Court and it did not form part of the balance sale consideration. Even if it is taken that the interest amount on the balance sale consideration accrued till 1995 was to be withdrawn by the judgment debtors, this fact has to be contested before the High Court, which alone permitted the decree holder to withdraw the interest.

10. It is to be noted in the judgment of the first appeal dated 22.03.2006, the condition is to the effect that the plaintiff should pay the balance sale consideration within 8 weeks. The only would mean that the



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balance sale consideration of Rs.1,29,000/- should alone be paid. There is no dispute as to the question of the sale consideration for which the Sale Agreement was entered into and in fact the matter was set at rest by virtue of the judgment of the first appeal. The learned Executing Judge has rendered a clear finding as to the compliance of the condition and proceeded to pass an order to execute the Sale Deed.

11. It is pertinent to note that even the S.L.P. filed by the judgment debtors was also dismissed on 27.11.2009. Having contested the suit for several years and got the decree which attained finality, the Courts cannot deprive the decree holder and stand in the way of executing the decree, just because the petitioner had filed a petition under Section 28 of the Specific Relief Act with false averments. The petitioner has not obtained any order of stay for operation of the decree from any Courts in view of the petition filed by him under Section 28 of Specific Relief Act. The records would show that the petition in I.A.No.947 of 2011 was filed before the I Additional Subordinate Court, Coimbatore under Section 28 of Specific Relief Act way back in the year 2011. The Execution Proceedings was filed



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in the year 2007 and S.L.P. filed before the Hon'ble Supreme Court was also dismissed on 27.11.2009. At the risk of repetition, it is also made clear that the decree holder has deposited the balance sale consideration even before the direction of the Court and hence, there is no reason to file a petition under Section 28 of Specific Relief Act.

12. In the backdrop of the above facts, it can be only seen as an attempt to dilate the execution proceedings and prevent the plaintiff from reaping the fruits of the decree, which she obtained in the year 1989. The Execution Court is expected to execute the decree in its true letter and spirit. When the decree is not stayed by any order of the Court, nothing will prevent the Executing Court to pass orders in terms of executing the decree. Hence, I find no factual or legal infirmity in the order passed by the learned II Additional Subordinate Judge, Coimbatore.

13. Accordingly, this Civil Revision Petition is dismissed and the order dated 10.12.2021 passed by the learned II Additional Subordinate Judge, Coimbatore, in E.P.No.220 of 2007 in O.S.No.680 of



1985 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

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27.06.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

The II Additional Subordinate Judge,
Coimbatore.



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C.R.P. (NPD) No.733 of 2022
and C.M.P. No.3680 of 2022



R.N.MANJULA, J.

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27.06.2022