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CRP.No.2085 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.2085 of 2018

and

C.M.P. No. 12481 of 2018

M. Rangasamy
Petitioner

..

Versus

1.K. Shanthi
2.C. Kandasamy,
3.K. Thangamani (Died),
4.K. Selvaraj,
5.K. Shanmugam

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 passed in E.A. No.10/2015 in E.P. No.76/2014 in O.S. No.91/2006 on the file of the Principal Subordinate Judge, Tiruppur.

For Petitioner : Mr.D. Nellaiappan

For Respondents : Mr. V.P. Sengottuvel for R1 & R2

: No appearance for R4 & R5



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ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decretal order dated 10.08.2017 passed in E.A. No.10 of 2015 in E.P. No.76 of 2014 in O.S. No.91 of 2006 on the file of the Principal Subordinate Judge, Tiruppur.

2. The petitioner herein is the plaintiff and the respondents herein 3 to 5 are the defendants in the original suit. The respondents 1 and 2 being third parties to the original suit, are said to have purchased the suit schedule property who are the petitioners in the E.A. No.10 of 2015 on the file of the Principal Subordinate Judge, Tiruppur.

3. The case of the petitioner is that the petitioner has filed the suit for specific performance in O.S. 91 of 2006 before the Trial Court seeking for a direction to the defendants to execute the Sale Deed to deliver the possession of the suit property in favour of the plaintiff, after receiving the balance sale consideration of Rs.2,78,000/- from the plaintiff at his expenses with respect of the suit property, on failure of the defendants, to



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permit the plaintiff to get registered sale deed and possession of the suit property through Court in favour of the plaintiff by depositing the balance sale consideration of Rs.2,78,000/- into the Court. Based on the memo for having received of the balance sale consideration filed by the defendants therein, the Trial Court decreed the suit as prayed for by Judgment and decree dated 18.08.2009. Thereafter, as per the aforesaid Decree, the defendants have not executed the Sale Deed in favour of the plaintiff/petitioner herein. Hence, in order to execute the aforesaid Decree, the plaintiff/petitioner herein has filed E.P. No.76 of 2014 before the Execution Court. During the pendency of the execution application, the third parties namely, the respondents 1 and 2 herein have filed E.A. No.10 of 2015 under Section 47 of CPC with a prayer to declare that the decree passed in O.S. No.91 of 2006 dated 18.08.2009 as in executable in respect of the petition mentioned properties and dismiss the same. The Execution Appellate Court after hearing both sides and perusing the materials available on record, allowed the E.A.No.10 of 2015 by its order dated 10.08.2017 holding that the objection raised by the 1st respondent/petitioner herein in respect of the Ex.P12 memo seems to be unacceptable and based on the Ex.P12 memo, the 1st respondent/petitioner herein had conceded the



Ex.P3-Sale Deed in favour of the 2nd petitioner/2nd respondent herein and only upon his request, the Court has recorded the same and dropped further proceedings as the decree is fully satisfied and as already stated the Ex.P2-Sale Deed in favour of the 1st petitioner/1st respondent herein is also proved by the petitioners/respondents 1 and 2 herein. Being aggrieved by the aforesaid order, the plaintiff/petitioner herein has filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioner would submit that the learned Principal Subordinate Judge, Tiruppur failed to apply his judicial mind while adjudicating the petition that the respondents 1 and 2 were well aware about the pendency of the suit in O.S. No.91 of 2006 and decree of the same before entering into the sale Deed in favour of them dated 09.07.2008 and 03.09.2009 in respect of the suit property. Further, while the petitioner herein did not admit his signature filed in the memo dated 11.09.2009 for the return of the documents to the defendants, the Principal Sub-ordinate Judge, Tiruppur is wrongly allowed the application in E.A. No.20 of 2015 based on the aforesaid memo. Hence, it is liable to be set aside.



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5. The learned counsel for the respondents 1 and 2 would submit that the plaintiff/petitioner herein having colluded with the respondents 3 to 5 has filed the Execution Application as though the decree passed in the aforesaid suit is still subsisting by suppressing the memo filed by the defendants before this Court on 11.09.2009. Thus, the plaintiff/petitioner herein has played a fraud by filing the execution application to execute the decree which has been fully satisfied and also by suppressing the execution of sale deeds dated 09.07.2008 and 03.09.2009 in favour of the respondents 1 and 2 herein. The respondent 3 to 5 herein in collusion with the petitioner remained exparte in the execution proceedings. The decree passed in the aforesaid suit has been fully satisfied as per the documents filed by the defendants and as such the plaintiff/petitioner herein has no right to claim any right based on the said decree in respect of the petition mentioned properties. Hence, the Execution Appellate Court has rightly allowed the application in E.A.No.10 of 2015 filed by the respondents 1 and 2 herein.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the material available on records. It is reported that the respondent 3 has died and there is no



appearance on the side of the respondents 4 and 5.

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7. On a perusal of the records, it is seen that the said Sale Deeds dated 09.07.2008 and 03.09.2009 executed in favour of the respondents 1 and 2 namely Shanthi and Kandasamy respectively have not been challenged by the plaintiff/petitioner herein. Further, there is no record being taken action against the respondents 1 and 2 for executing the Sale Deeds while the suit is decreed in favour of the plaintiff/petitioner herein. Till date the plaintiff has not taken any steps to object the memo dated 11.09.2009 which was said to be filed before the Trial Court in the year 2009. Therefore, the memo is still in force and Sale Deeds executed in favour of the respondents 1 and 2 are also in force. The Trial Court has recorded the Ex-P12 Memo dated 11.09.2009 filed by the plaintiff in O.S. No.91 of 2006 before the Trial Court stating that the decree has been fully satisfied and he has no objection for the defendants in the suit to get return the original title deeds relating to the petition mentioned properties. Unless the memo is set aside, the plaintiff/petitioner herein is not entitled to the suit property. Originally the suit property is belonged to the Nachimuthu Gounder by virtue of Sale Deed dated 08.05.1956. It is said that the legal heirs of the



Nachimuthu Gounder had executed the said Sale Deed in favour of the respondents 1 and 2. Despite it has been stated that a complaint was given to the police station in regard to the registration of the said sale deeds, no proof was submitted by him before the Court below and further he has not chosen to approach the Civil Court by raising his objection to the Ex.P12-Memo. Under such circumstances, this Court is not inclined to interfere with the order dated 10.08.2017 passed by the Principal Subordinate Judge, Tiruppur and accordingly, this Civil Petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed if any. No costs.

27.10.2022

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Index : Yes/No

Speaking Order : Yes/No

T.V.THAMILSELVI, J.



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Copy To:

1. The Principal Subordinate Judge, Tiruppur.
2. The Section Officer, V.R.Section
High Court, Madras.

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