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C.R.P.Nos.1484 & 2358 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.1484 & 2358 of 2016

and

C.M.P.Nos.8164 & 8165 of 2016

C.R.P.No.1484 of 2016

V. Rajendran

....

Petitioner

Vs

1. Gudaru Prasanthi
rep. by her Power Agent
G.Srinivasulu Naidu,
S/o.G.C.Naidu, Advocate
No.4/542, Aravinda Nagar Colony,
Kadapa – 516 001.

2. G. Bhavani

....

Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal orders dated 13.04.2016 made in E.A.No.10 of 2012 in E.P.No.5 of 2011 in O.S.No.389 of 2005 on the file of the Principal District Court of Kancheepuram District at Chengalpattu and pray for setting aside the same.

C.R.P.No.2358 of 2016

V. Rajendran

....

Petitioner

Vs

G. Bhavani

....

Respondent



C.R.P.Nos.1484 & 2358 of 2016

Prayer :- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the docket order dated 13.04.2016 made in E.P.No.5 of 2011 in O.S.No.389 of 2005 on the file of the Principal District Court of Kancheepuram District at Chengalpattu.

In C.R.P.No.1484 of 2016

For Petitioner : Mr.V.Manohar
For R1 : Mr.C.Jagadish
For R2 : Not ready in notice

In C.R.P.No. 2358 of 2016

For Petitioner : Mr.V.Manohar
For Respondent : Not ready in notice

COMMON ORDER

C.R.P.No.1484 of 2016 has been filed as against the fair and decreetal order dated 13.04.2016 made in E.A.No.10 of 2012 in E.P.No.5 of 2011 in O.S.No.389 of 2005 on the file of the Principal District Court of Kancheepuram District at Chengalpattu, thereby allowing the petition filed under Section 47 of CPC read with Order 21 Rule 97 of CPC.

2. C.R.P.No.2358 of 2016 has been filed as against the docket order dated 13.04.2016 made in E.P.No.5 of 2011 in O.S.No.389 of 2005 on the file of the Principal District Court of Kancheepuram District at Chengalpattu, thereby dismissing the petition filed under Section 47 of CPC read with Order 21 Rule 97 of CPC



3. The petitioner filed a suit for specific performance as against the second respondent in O.S.No.389 of 2005, in which the second respondent was set ex-parte and obtained ex-parte decree on 31.01.2008. The said suit was filed on the strength of the agreement for sale dated 01.05.2005 between the petitioner and the second respondent. The suit was filed on 27.12.2005. The petitioner filed an Execution Petition to execute the decree passed in the suit in E.P.No.5 of 2011. Pending Execution Petition, the first respondent, being a third party, filed an application under Section 47 of CPC read with Order 21 Rule 97(1) and 151 of CPC to recognise the claim of the first respondent in respect of the subject property by dismissing the E.P.No.5 of 2011 in O.S.No.389 of 2005, as the decree sought to be executed is null and void *ab initio* and the same was allowed. Aggrieved by the same, the present Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner would submit that the first respondent and the second respondent colluded together and resisted the execution of a valid decree passed as against the second respondent. The second respondent had cunningly created third party interest in respect of the subject property and



C.R.P.Nos.1484 & 2358 of 2016

remained ex-parte in the suit. He further submitted that it is settled position of law that, an objection on the ground that the decree is invalid, being collusive, can be tried only in a regular suit and not in execution proceeding under Section 47 or under Order 21 Rule 97 of CPC and as such, the prayer made by the first respondent in the petition itself is not maintainable and it cannot be decided in the execution petition. The Execution Court has no jurisdiction to conduct an enquiry, either suo-motu or at the instance of the third party, regarding the title of the third party and the remedy of the third party is only by a separate regular suit. He further submitted that the Court below allowed the petition only on the maintainability and non appearance. That apart, the power of attorney representing the second respondent holding a valid, legal and proper power of attorney for representing the first respondent.

5. In support of his contention, he relied upon the following

Judgments :

1. (2022) 7 Supreme Court Cases 384 in the case of P.Ramasubbamma Vs. V.Vijayalakshmi and others



2. 2013 (3) MWN (Civil) 528 in the case of

***B.Narasimhulu Chetty and others Vs.
K.Vijayalakshmi and others.***

3. CDJ 2005 MHC 774 in the case of

R.Radha Vs.B.Saraswathy

6. Per contra, the learned counsel appearing for the first respondent submitted that the first respondent purchased the subject property from the second respondent by a registered sale deed dated 31.08.2005. The suit was filed only on 27.12.2005. In the said suit, the second respondent was set ex-parte. The Trial Court mechanically decreed the suit without even discussing anything and it is a violation of Order 20 Rule 4 of CPC. Therefore, it cannot be executable without adding the first respondent as a party to the suit.

7. Admittedly, the petitioner purchased the subject property prior to the suit. Therefore, the first respondent rightly filed a petition under Section 47 read with Order 21 Rule 97(1) of CPC and 151 of CPC. Therefore, the decree passed in O.S.No.389 of 2005 is not a valid one and it is invalid and it cannot be executable one. Therefore, the Court below rightly allowed the petition and dismissed the execution petition.



8. Heard, Mr.V.Manohar, learned counsel appearing for the petitioner and Mr.C.Jagadish, learned counsel appearing for the first respondent and perused the materials available on record.

9. Admittedly, the first respondent purchased the suit property from the second respondent by a registered sale deed dated 31.08.2005, which was marked as Ex.P2. In pursuant to the sale deed, the first respondent was issued patta in respect of the subject property under Patta No.71. Thereafter, the said property was also assessed to property tax. After purchase of the subject property, the petitioner filed a suit on 27.12.2005 in O.S.No.389 of 2005. Though the petitioner filed a suit on the strength of the agreement for sale dated 01.05.2005, the petitioner failed to produce the same before the Trial Court. Even according to the petitioner, the said agreement for sale was not a registered one. The second respondent failed to appear before the Trial Court and as such, he was set ex-parte and the Trial Court decreed the suit by a Judgment and Decree dated 31.01.2008. On the strength of the decree, the petitioner filed an Execution Petition in E.P.No.5 of 2011. Pending Execution Petition, the first respondent filed an application under Section 47 Order 21 Rule 97(1) of CPC, to recognise the claim of the first respondent in



respect of the subject property by dismissing the E.P.No.5 of 2011 in O.S.No.389 of 2005, as the decree sought to be executed is null and void *ab initio*. The petitioner filed a suit for specific performance without impleading the purchaser of the property as defendant as per Section 19 of the Specific Relief Act. Therefore, the Judgment and Decree passed by the Trial Court is not enforceable and the same is not binding on the first respondent, who is the necessary party as per Section 19 of the Specific Relief Act. Further, admittedly, the second respondent was set ex-parte and the Trial Court passed an ex-parte decree. The Judgment reads as follows :

Judgment

“Suit for specific performance of Contract of sale agreement dated 01.05.2005 and directing the defendant to receive the balance of sale consideration of Rs.6,72,000/- and execute a sale deed in favour of plaintiff, failing which this Hon'ble Court may execute the sale deed in favour of plaintiff on behalf of the defendant and relief of permanent injunction as against the defendant, her men, agents, servants and legal heirs and assignee from in any manner not alienating the suit property to 3rd parties and for cost.



C.R.P.Nos.1484 & 2358 of 2016

Prove Affidavit filed. P.W.1 examine. Ex.A1 to A3 marked. Claim proved. Suit is decreed as prayed for with costy and defendant is directed to execute the sale deed with one month from the date of deposit of balance sale consideration by plaintiff into Court. Plaintiff is directed to deposit the same within one month.

Pronounced by me in the open court this the 31st day of January 2008.”

10. Thus, it is clear that the Court below failed to frame any issue. Though the defendants were set ex-parte, the Trial Court has to pass a Judgment and reasons must be available to the extent to indicate that the Court has applied its mind to the pleadings, relief claimed thereunder, the evidence adduced and thereafter conclusion had been arrived at by the Court. The Division Bench of this Court in the case of ***Meenakshisundaram Textiles represented by its Managing Director Vs. Valliammal Textiles Ltd.***, reported in ***(2011) 3 CTC 168*** held that even a Judgment rendered ex-parte and a decree is drawn on the basis of that Judgment is appealable. In case that Judgment and Decree became final without there being any appeal, decree is executable. In the event, the defendants were set ex-parte, the Court should be extra careful and



consider the pleadings and evidence to arrive at a finding as to whether the plaintiff has made out a case for a decree. An ex-parte Judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought, for rendering such Judgment. In view of the above, the ex-parte decree passed by the Court below is not on line with the provision of Order 20 Rule 4(1) & (2) of C.P.C. In fact, the petitioner also failed to mark the agreement for sale dated 01.05.2005, based on which the suit was filed by him for specific performance. The Judgments relied upon by the learned counsel for the petitioner are no way connected to the case on hand or not applicable to decide this case.

11. The learned counsel appearing for the first respondent also relied upon the Judgment reported in *AIR 1991 Madras 209* in the case of *Vimala Ammal Vs. C.Suseela and others*, in which, this Court held that in a suit for specific performance of sale agreement, the subsequent purchaser of the property is a necessary party. The Judgment and Decree without impleading the subsequent purchaser of the subject property cannot be executed by the prior purchaser.



C.R.P.Nos.1484 & 2358 of 2016

12. In the case on hand, admittedly the first respondent purchased the subject property from the second respondent as early as on 31.08.2005 by a registered sale deed. The suit for specific performance was filed on 27.12.2005. Therefore, without impleading the first respondent as a party to the suit, the suit decree cannot be executed. That apart, the first respondent did not have had any knowledge about the encumbrance prior to the notice allegedly issued to the second respondent. Therefore, the Courts below rightly allowed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

13. In the result, CRP No.1484 of 2016 stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

14. In view of the dismissal of the CRP No.1484 of 2016, the CRP No.2538 of 2016 is also dismissed. No costs.

06.12.2022

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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C.R.P.Nos.1484 & 2358 of 2016

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1. The Principal District Court
Kancheepuram District at Chengalpattu
2. The Section Officer,
V.R. Section,
Madras High Court, Madras.



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C.R.P.Nos.1484 & 2358 of 2016

G.K.ILANTHIRAIYAN, J.

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C.R.P.Nos.1484 & 2358 of 2016
and
C.M.P.Nos.8164 & 8165 of 2016

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