



CRP.NPD.No.1152/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.NPD.No.1152/2019 and CMP.No.7420/2019

[Virtual Mode]

Bagyalakshmi

.. Petitioner

Vs.

N.Saraswathiammal (died)

1.N.Selvakumari

2.Neelavathi

3.Ramadoss

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order dated 03.12.2018 passed in REA.No.159/2018 against EP.No.24/2018 in O.S.No.125/2010 on the file of the learned Principal Sub-ordinate Court at Krishnagiri.

For Petitioner : Mr.Selvirajesh

For R1 : No appearance

For R2 : No appearance

For R3 : Mr.A.Muthukumar



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ORDER

- (1) This Civil Revision Petition is directed against the order in REA.No.159/2018 against the REP.No.24/2018 in O.S.No.125/2010 passed by the Principal Sub Court, Krishnagiri.
- (2) Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:
- (3) The petitioner, admittedly is a third party to the proceedings in O.S.No.125/2010. The said Suit in O.S.No.125/2010 before the Principal Sub Court, Krishnagiri was filed by the 4th respondent in the Civil Revision Petition for partition of 1/4th share in the Suit property.
- (4) It is not in dispute that the Preliminary Decree was granted. It is also not in dispute that after the Preliminary Decree one of the sharers died and therefore, the plaintiff/4th respondent applied for modification of shares and the Preliminary Decree which was passed in the Suit was modified by granting 1/3rd share to the 4th respondent/plaintiff.



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- (5) It is admitted that the Suit in O.S.No.125/2010 is also for permanent injunction restraining the defendants in the Suit from dealing with the property which is the subject matter of the Suit. Despite the fact, that the Preliminary Decree and a decree for permanent injunction was granted on 12.01.2011 and the subsequent decree modifying the share from 1/4th to 1/3rd was given by another decree dated 06.08.2013, the revision petitioner has purchased the Suit property from the 2nd defendant in the Suit by a Sale Deed dated 29.10.2012.
- (6) The Sale Deed itself is in utter disregard to the decree for injunction granted against the 2nd defendant, the vendor of the revision petitioner. It is also stated by the plaintiff that the sale is a fraudulent one. It is admitted that the sale in favour of the revision petitioner is during the pendency of proceedings. The sale is not only fraudulent but also in utter disregard and disobedience to the decree granted by the Court in the Suit in O.S.No.125/2010.
- (7) The revision petitioner earlier filed a petition to implead herself as



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party to the Execution Petition. It is admitted that the said application was dismissed on the ground that the remedy for the revision petitioner is to proceed against the 2nd defendant and not to claim any right over the property on the basis of the Sale Deed which was executed, during the pendency of proceedings and against an order granting injunction restraining the defendants from alienating the property. Though the petitioner states that she is innocent and bonafide purchaser, the fact that the sale in her favour is hit by lis pendens and that the same was in violation of decree for injunction granted by the Competent Court are admitted.

- (8) The application filed by the revision petitioner in I.A.No.605/2015 to implead himself as a party to the Suit in O.S.No.125/2010 was dismissed. The petitioner challenged the order before this Court in CRP.No.4473/2017. This Court after recording the admitted facts that the Sale Deed obtained by the revision petitioner is hit by lis pendens and the application is filed by the revision petitioner at the final decree proceeding, was of the view that the belated application filed by the revision petitioner cannot be entertained and that it is



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open to the revision petitioner to proceed against the 2nd defendant in the Suit independently.

- (9) It is stated that against the order passed in this Civil Revision Petition, the revision petitioner has filed a Review Application in SR.No.20219/2018. Very strangely, the revision petitioner has also filed an application in E.A.No.159/2018. In the meanwhile, it is admitted that the final decree application was allowed and final decree was passed. Thereafter, the plaintiff filed Execution Petition in EP.No.24/2018 for delivery of property allotted to the plaintiff.
- (10) Delivery was also effected on 04.01.2019. When these facts are not in dispute, the revision petitioner has filed an application in E.A.No.159/2018 in EP.No.24/2018 to stay further proceedings in connection with the EP.No.24/2018 in O.S.No.125/2010 pending disposal of the review petition in Review Application SR.No.20219/2019 pending before this Court.

- (11) After filing counter, the Lower Court dismissed the application by



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order dated, 03.12.2018. Aggrieved by the order dismissing the application to stay the execution proceeding, the above Civil Revision Petition is filed.

- (12) The learned counsel appearing for the revision petitioner submitted that the Lower Court erroneously dismissed the stay application without appreciating the genuine and *bona fide* claim of the petitioner.
- (13) The learned counsel further submitted that the petitioner has also filed an application under Section 47 of CPC and that the Lower Court ought not to have dismissed the application pending the other application filed under Section 47 of CPC. Learned counsel further submitted that the Lower Court did not examine any evidence and passed an order without permitting the petitioner to prove her contentions or giving an opportunity to her.
- (14) It is submitted that the order of Lower Court is against the principles of natural justice. The learned counsel submitted that the Lower Court did not notice the pendency of Review Application before this Court while dismissing the application filed by the revision petitioner



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to stay the proceedings. Since the petitioner is the owner of the property having purchased the same from one of the parties to the Suit for partition, learned counsel submitted that the petitioner should be given the relief as right to claim a share by stepping into the issues of one of the co-owner cannot be curtailed.

- (15) None of the submissions of the learned counsel is appealing to this Court, having regard to the admitted facts.
- (16) First of all, the revision petition has become infructuous by delivery of property which was effected on 04.01.2019. By delivery of the property through execution of the final decree, the Execution Petition comes to an end. Therefore, the application filed by the revision petitioner for stay of proceedings in EP.No/24/2018 in O.S.No.125/2010 is unnecessary as the prayer has become infructuous.
- (17) As pointed out earlier, the revision petitioner has purchased the property from the 2nd defendant in the Suit, despite the Preliminary Decree in favour of the plaintiff. It is also admitted that the



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alienation in favour of the revision petitioner was in utter disregard to the decree of the Trial Court in the Suit granting permanent injunction restraining the defendants from alienating or creating any sort of documents in favour of anybody in respect of the Suit properties.

- (18) After judgment and decree dated 06.08.2013 in O.S.No.125/2010, final decree was passed and delivery as per final decree was effected. In the factual background, the application filed by the revision petitioner to stay the proceeding merely because the review application is pending cannot be entertained.
- (19) Despite pointing out the fact that by delivery of possession the prayer before the Lower Court to stay the proceedings became infructuous and that the Civil Revision Petition does not stand for further scrutiny, learned counsel vehemently argued that the petition filed by the revision petitioner before the Lower Court is maintainable and can be pursued since the application filed by the revision petitioner in EA.No.342/2018 to stay all further proceeding in EP.No.24/2018 is pending along with another application filed



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under Section 47 of CPC.

- (20) It is admitted that EA.No.341/2018 is also filed under Section 47 of CPC with the prayer to enable the petitioner to retain possession of the property by dismissing the Execution Petition in EP.No.24/2018. From the additional facts supplied by the revision petitioner, this Court has found that the revision petitioner has made several attempts to thwart the execution proceedings, without approaching the Court at the appropriate time seeking appropriate relief. Assuming that the petitioner in the review application is allowed, the petitioner cannot pursue the present application to stay the execution after delivery.
- (21) There is nothing to stay the further proceedings in the Execution Petition which had come to an end by directing delivery of the property as per the final decree. Though this Court after pointing out the several lapses and the conduct of the revision petitioner, learned counsel has only exposed the wrong advice given to the petitioner in making several attempts by filing unwanted



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applications at various stages. The revision petitioner has filed an application earlier to implead himself as a party to the Suit after the Preliminary Decree is passed. However, this Court finds that the grievance of the petitioner was never considered on merits as the petitioner did not seek appropriate remedy at the appropriate time. The petitioner cannot get any relief in this Civil Revision Petition after delivery of property. The petitioner has pleaded fraud which can be independently established.

- (22) Even after, this Court started dictating this order, the learned counsel for the revision petitioner was arguing the case once again from the beginning unnecessarily.
- (23) In the result, the **Civil Revision Petition is dismissed with the cost of Rs.10,000/-[Rupees Ten Thousand Only] payable by the revision petitioner to the 4th respondent/plaintiff within the period of two weeks from the date of receipt of a copy of this order.** However, it is open to the revision petitioner to prosecute the application filed under Section 47 of CPC to its logical end and the Lower Court may dispose of that application on merits and



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uninfluenced by any observations made in this order.

02.02.2022

cda

Internet : Yes

To

The Principal Sub-ordinate Court, Krishnagiri.



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S.S.SUNDAR, J.,

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