



CRP.No. 1686 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

**Civil Revision Petition No. 1686 of 2020
&
CMP.No. 10578 of 2020**

1. Ramalinga Naidu
2. Elango

.. Petitioners

Versus

Vijaya Ammal
Respondent

..

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 21.01.2020 passed in E.A.No.88 of 2018 in E.P.No.02 of 2004 in O.S.No.166 of 2002 on the file of the I Additional Subordinate Judge, Cuddalore;

For Petitioners : Mr. D. Baskar

For Respondent : Mr.T.S.Baskaran

ORDER

The revision petitioners are the respondents/judgment debtors in E.P.No.2 of 2004 in O.S.No.166 of 2002 on the file of I Additional Sub Court, Cuddalore.



2. The respondent/plaintiff filed a suit in O.S.No. 166 of 2002 for specific performance of contract and after full contest, the said suit was decreed by the learned I Additional Subordinate Judge, vide decree and judgment dated 29.06.2004 directing the revision petitioners/defendants to execute a sale deed in favour of the respondent/plaintiff after receiving balance sale consideration of Rs.25,000/- and in default, for execution of such sale deed by the Court, in favour of the petitioners. Thereafter, the respondent/plaintiff filed E.P.No.2 of 2004 in O.S.No.166 of 2002 before the I Additional Sub Court, Cuddalore. In the said proceedings, the revision petitioners filed an application in E.A.No.251 of 2009 praying for closure of the suit by holding that the suit agreement and decree stand rescinded in view of the settlement arrived at between the parties and that the respondents also repaid the entire amount by executing a document dated 4.8.2008, whereby, the said agreement was cancelled. In the Executing Court, the respondent/plaintiff filed a counter and contested the said petition. The said petition was allowed by the Execution Court. Aggrieved over which, the respondent/plaintiff filed C.R.P.No.4158 of 2010 before this Court. The Civil Revision Petition was allowed by this Court on 01.03.2013 by observing thus:



'19. Thus, a combined reading of all the sub-rules of Order 21 Rule 2 of C.P.C., it shows here again that the Court cannot go beyond the decree and what is contemplated is recording or certifying of the payment or adjustment of the money paid outside court, which is otherwise payable under the decree passed by the Court. Thus, the grounds to be made under Order 21, Rule 2 must be either in terms of the decree or in consonance with decree and not against the decree. Therefore, even by construing the application filed by the respondents as the one under 21 Rule 2 CPC, still the same is not maintainable to grant the relief as it is not the case or the respondents that the money payable under the decree was paid out of court settlement to the decree holder. Consequently, the application filed by the respondents cannot even be construed as the one under Order 21 Rule 2 leave alone the fact that there was no certification by the decree holder or recording of adjustment by the Court. Therefore, even by applying the said provision under Order 21, Rule 2 CPC to the facts of the case, I consider that the respondents are not entitled to get any relief based on their contentions and averments made in support of their application filed before the court below. Accordingly, the second question is also answered in



negative against the respondents.”

3. Thereafter, the Execution Petition was restored to file as per the orders passed in Civil Revision Petition and once again the judgment debtors filed another Execution Application in E.A.No.88 of 2018 in E.P.No.2 of 2004 under Order 21, Rule 2 CPC, contending that the entire decree is discharged. The respondent/plaintiff /decree holder, filed a counter. Thereafter, the revision petitioners examined nine witnesses and marked six documents. After full contest, the learned I Additional Subordinate Judge, Cuddalore dismissed the E.A.No.88 of 2018 vide his orders dated 21.1.2020. Aggrieved over the same, the judgment debtors/defendants have filed the present Civil Revision Petition.

4. In the E.A.No.88 of 2018, the main contention of the judgment debtors was that they paid a sum of Rs.2 lakhs to the respondent/plaintiff in the presence of Panchayatdars. The learned counsel appearing for the revision petitioners contended that the respondent/plaintiff received the entire amount in full quit and a receipt was also signed by her in the presence of Panchayatdars. According to him though the respondent/decree holder promised to withdraw the execution proceedings, she did not keep up her promise.



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5. According to the learned counsel for the revision petitioners, though eight Panchayatdars were examined on the side of the judgment debtors, there was no reason for the executing court to reject their evidence. He also relied on the following decisions of the Supreme Court reported in (i) **1961 AIR (Mad) 262 (Dhanapal Chettiar vs. Govindaraja Chetty and others)** and (ii) **1951 AIR (SC) 280 (Bishnudeo Narain and another Vs. Seogeni Rai and others)** in support of the above contention. According to him, the executing court committed a grave mistake by holding that it cannot go beyond the decree. Therefore E.A.No.88 of 2018 filed by the judgment debtors under Order 21, Rule 2 CPC should be allowed.

6. Per contra, Mr.T.S.Baskaran, learned counsel appearing for the respondent/plaintiff contended that apart from the present judgment debtors, their brothers claiming to be the co-owners of the suit property filed a petition under section 47 CPC in E.A.No.282 of 2014 and the same was dismissed by the executing court, against which, CRP.No.2895 of 2015 was filed by them. The said petition was also dismissed by this Court. His specific contention is that the judgment debtors have been filing petitions after petitions



to drag on the proceedings and that the executing court was right in dismissing the petition filed by the judgment debtors in E.A.No.88 of 2018. It is his contention that the executing court had analysed all the evidence adduced on the side of the revision petitioner threadbare and came to a conclusion that the revision petitioners have not proved their contention that they discharged the amount as alleged by them.

7. Admittedly, the suit for specific performance based on a written agreement came to be decreed in favour of the respondent/plaintiff on 29.6.20014 and as per the decree, the balance sale consideration of Rs.25,000/- has to be paid by him to get the sale deed executed in his favour. However, though the decree holder/plaintiff paid the amount of Rs.25,000/-, the revision petitioners did not come forward to execute the sale deed and thereafter the decree holder filed E.P.No.2. of 2004 before the I Addl. Sub Court, Cuddalore. The revision petitioners/judgment debtors filed the following petitions;

(1) praying to close the suit by holding that the suit agreement and decree stood rescinded under section 28 of the Specific Relief Act in E.A.No.251 of 2004;



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(2) Petition under section 47 CPC in E.A.No.282 of 2014;

(3) Petition to record that the decree is discharged in full quit and satisfaction under order 21, Rule 2 CPC, in E.A.No.88 of 2018.

8. In the C.R.P.No.4158 of 2010, as already observed, this Court has clearly held that the Executing Court cannot go beyond the decree. This Court had also dealt with Order XXI Rule 2 CPC in its order.

9. Even subsequent to the passing of the said orders, the revision petitioners filed E.A.No.88 of 2018 again under Order 21, Rule 2 CPC and examined nine witnesses. The witnesses have not also corroborated with each other with regard to discharge of amount as claimed by the revision petitioners and this was also analysed by the Executing Court in its order dated 21.1.2020. Thus, I do not see any ground to allow the present petition and accordingly the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



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10. Since the Civil Revision Petition is of the year 2004, the Executing Court is directed to dispose of the suit as early as possible, not later than three months from the date of receipt of a copy of this order.

19.09.2022

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Index : Yes / No

Internet: Yes/No

To

1.The I Additional Subordinate Judge, Cuddalore.

2.The Section Officer, V.R. Section, High Court, Madras.



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R. HEMALATHA, J.

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