



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.04.2022

PRONOUNCED ON :29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3750 of 2014
and M.P.No.1 of 2014

N.K.Senkaliappan

... Petitioner

VS.

1.Sri Chitra Mills,
represented by its Partner S.Kumar,
No.11, Rajaram Street,
Thirupur Town, Tirupur District.

2.A.Natarajan
3.Sangameswaran

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 21.07.2014 passed in E.A.No.176 of 2013, in E.P.No.185 of 2008, in O.S.No.568 of 2008 by the II Additional Sub Court, Coimbatore.



WEB COPY



2

For Petitioner :Mr.K.S.Karthik Raja
For Respondents :R1-Not ready notice
R2-died (steps due)
R3-Notice Served

ORDER

Aggrieved by an order allowing the petition in E.A.No.176 of 2013, seeking delivery of possession filed by the decree holder, the second respondent/judgment debtor has come up with this revision.

2. The first respondent filed a suit for specific performance of the contract dated 04.11.1987 against the revision petitioner and other respondents in O.S.No.568 of 1992, on the file of the Subordinate Court, Coimbatore and obtained a decree. As per the terms of decree, the first respondent/plaintiff was directed to deposit balance sale consideration for Rs.25,000/- within two months and the revision petitioner and other respondents, who were arrayed as defendants 1 to 3 in the suit were directed to execute a sale deed within two months thereafter and to hand over possession of the suit property, [i.e., subject matter of the agreement].



3. In pursuance of the same, the first respondent filed execution petition in E.P.No.185 of 2008, seeking execution of the sale deed and as the judgment debtors failed to execute the sale deed, the executing Court itself executed the sale deed as per the terms of the decree and the sale deed was registered on 02.04.2013. Recording the same, the execution petition was closed on 15.04.2013, thereafter, the first respondent filed execution application in E.A.No.176 of 2013 for delivery of the property and the same was opposed by the revision petitioner by raising the following points:

(a) There was a dispute among the partners of the first respondent Firm and one of the partners namely Deivathal was arrayed as 5th defendant and hence the Execution Petition is not maintainable;

(b) The main E.P was filed for execution of sale deed and the present E.A is for delivery of suit property, the prayer in E.A is beyond the scope of main execution petition;



(c) The Execution Application was filed under Order 21 Rule 95 of CPC, which is meant for delivery of property purchased under Court auction and hence Execution Application filed by quoting wrong provision of law is not maintainable.

4. The executing Court repelled the contention of the respondents therein/Revision petitioner and allowed said Execution Application and ordered delivery. Against the said order, the present Civil Revision Petition is filed by the revision petitioner.

5. I have heard the arguments of the learned counsel for the petitioner, who elaborated the above three points raised in the counter to EA, in his arguments. The typed set and other relevant records are perused.

6. The first point argued by the learned counsel for the petitioner is that the execution application filed by the first respondent Firm is not maintainable in view of the fact, there is a dispute among the partners of the Firm and one of the partners was arrayed as 5th defendant in the suit. It is settled law that the partners of the Firm are principal and agent for



each other and one of the partners is sufficient to represent the firm. In case there is any dispute among the partners it is for them to work out the same in the manner known to law in appropriate proceedings. The revision petitioner who suffered a decree is not entitled to canvass that point. Even if the petition is allowed and the first respondent is granted physical possession of the suit property, it is only subject to the out come of any legal proceedings initiated by the partners of the Firm among themselves.

7. The second point raised by the learned counsel for the petitioner is that the main E.P was filed for execution of the sale deed, but E.A is filed for delivery of suit property and hence the prayer in E.A goes beyond the scope of main E.P. In a suit for specific performance, when a decree is granted for execution of sale deed, the delivery of the property covered by said sale deed is incidental to main relief. Even if there is no prayer by the plaintiff seeking delivery of the property, the executing Court can pass an order for delivery of the property in order to give full effect to the decree for specific performance. In *S.S.Rajabathar vs N.A.Sayeed*, reported in AIR 1974 Madras 289, His Lordship Mr.Justice M.M.ISMAIL,, [as he then was] after referring to the decisions of the various High Courts,



held that in a suit for specific performance, grant of delivery of possession is incidental to the main relief of specific performance and hence even if there is no specific clause in the decree, the executing Court in order to give full effect to the decree for performance, can direct the judgment debtor to deliver possession to the decree holder. Hence, it cannot be stated that E.A for delivery of possession is beyond the scope of main E.P, as it is only incidental to the main relief of performance. Further, the perusal of the decree, which is sought to be executed clearly shows there is a specific clause in the decree directing the defendant to hand over possession of the property to the decree holder. Hence, the Execution Application filed by the first respondent is maintainable and the executing Court correctly found the same was maintainable.

8. The third point urged by the learned counsel for the petitioner was that E.A had been filed under Order 21 Rule 95 CPC, which is for delivery of property purchased in the Court auction and since the E.A was filed under wrong provision of law, the same is liable to be dismissed. It is settled law that quoting of wrong provision is not a ground to reject any relief and the Court should not be bound by the procedural technicalities.



While, granting a relief to the parties, the Courts are guided by the cause of justice and in order to do complete justice, the Court can take a liberal view by accordingly interpreting the procedural law. The executing Court rightly rejected the plea raised by the revision petitioner regarding the wrong provision of law quoted by the first respondent. Therefore, there is no illegality or irregularity in the order passed by the executing Court and consequently the revision fails.

9. The Civil Revision Petition is dismissed, confirming the order passed in E.A.No.176 of 2013, dated 21.07.2014. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

29.04.2022

Index : Yes/No
Internet : Yes/No
ub

To

The II Additional Sub Court, Coimbatore.



WEB COPY



8

S.SOUNTHAR, J.
ub

C.R.P.(PD).No.3750 of 2014

29.04.2022