



C.R.P.Nos.2277 and 2324 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 22.08.2022

Delivered On: 25.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.Nos.2277 and 2324 of 2020

and

C.M.P.Nos.14247 and 14620 of 2020

C.R.P.No.2277 of 2020

Dhanusu : Petitioner/Judgment Debtor/Defendant

Vs.

Muniyanantham : Respondent/Decree Holder/Plaintiff

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to reject the E.P.No.8 of 2020 in O.S.No.31 of 2014 on the file of learned District Munsif, Vandavasi, till the disposal of the appeal in A.S.No.10 of 2020 on the file of learned Sub Judge, Cheyyar.

C.R.P.No.2324 of 2020

Dhanusu : Petitioner/Judgment Debtor/Defendant

Vs.

Muniyanantham : Respondent/Decree Holder/Plaintiff



C.R.P.Nos.2277 and 2324 of 2020

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to set aside the fair and final order dated 16.12.2020 passed in E.A.No.23 of 2020 in E.P.No.8 of 2020 in O.S.No.31 of 2014 on the file of learned District Munsif, Vandavasi.

For Petitioner : Mr.B.Jawahar
in both CRPs

For Respondent : Mr.A.J.Mohamed Kassim
in both CRPs

COMMON ORDER

In view of the fact that the issues involved in both the Civil Revision Petitions are interconnected, both the Civil Revision Petitions are taken up together and disposed of by a common order.

2.C.R.P.No.2277 of 2020 had been filed to reject the E.P.No.8 of 2020 in O.S.No.31 of 2014 on the file of learned District Munsif, Vandavasi, till the disposal of the appeal in A.S.No.10 of 2020 on the file of learned Sub Judge, Cheyyar.

3.C.R.P.No.2324 of 2020 had been filed to set aside the fair and final order dated 16.12.2020 passed in E.A.No.23 of 2020 in E.P.No.8 of 2020 in



C.R.P.Nos.2277 and 2324 of 2020

O.S.No.31 of 2014 on the file of learned District Munsif, Vandavasi.

WEB COPY

4.The learned Counsel for the Petitioner submitted that the suit in O.S.No.22 of 2014 was filed by the Petitioner herein against the Respondent herein seeking the relief of Part Performance of the sale agreement dated 12.01.1995 and Permanent Injunction restraining the Respondent – Muniyanantham from alienating or encumbering the suit properties. The case of the Plaintiff in O.S.No.22 of 2014/Petitioner herein were as follows:

4.1.On 12.01.1995, the Plaintiff and Defendant entered into a sale agreement in respect of the suit properties. The Defendant agreed to sell the suit properties for sale consideration of Rs.21,200/- and the entire sale consideration was paid by the Plaintiff to the Defendant. The Defendant had handed over the possession of the suit properties to the Plaintiff. From 12.01.1995, based on the sale agreement, the Plaintiff is in possession and enjoyment of the suit properties. He is cultivating the suit properties and paying revenue tax in respect of the suit properties. It was agreed that the



C.R.P.Nos.2277 and 2324 of 2020

Defendant shall execute the sale deed as and when demanded by the Plaintiff. Time is not fixed for performance of contract. Time is not essence of the contract. In 2014 the Defendant attempted to sell the properties to the third parties. The Plaintiff sent legal notice dated 06.01.2014 to the Defendant calling upon him to execute the sale deed. The Defendant sent a reply notice dated 31.01.2014. The limitation period for filing the suit for specific performance is three years from the date when the performance is refused by the Defendant. The suit is filed within the period of limitation. The Defendant disputed the claim of the Plaintiff.

4.2.It is the contention of the Defendant that the Plaintiff had created the sale agreement and mutated his name in the Revenue records with an intention to grab the properties. Further, the Defendant submitted that after lapse of 19 years, the suit had been filed. The Defendant was in possession of the suit properties. In the first week of January, 2014, the Plaintiff has forcibly taken possession of the suit properties. Therefore, the suit is liable to be dismissed.



C.R.P.Nos.2277 and 2324 of 2020

WEB COPY 5.O.S.No.31 of 2014 was filed by the Respondent herein/Muniyanantham who is the Defendant in O.S.No.22 of 2014 seeking reliefs of Declaration of title, Recovery of Possession and Permanent Injunction restraining the Defendant/Petitioner herein from in any manner alienating or encumbering the suit properties. The case of the Plaintiff were briefly as follows:

5.1.The Plaintiff is the absolute owner of the properties. He purchased the land to an extent of 0.51 Acres in Survey No.11/6 by way of sale deed dated 21.11.1988 from one Dhanusu. The said Dhanusu purchased the said properties by sale deed dated 04.05.1984. The remaining extent of land in Survey No.11/6 were inherited by the Plaintiff and subdivisions were effected. The Defendant is the owner of the land adjacent to the suit properties. With an intention to grab the properties belonging to the Plaintiff, the Defendant created a sale agreement dated 12.01.1995 alleged to have been executed by the Plaintiff. Based on the said sale agreement, the Defendant issued legal notice dated 06.01.2014 demanding execution of



C.R.P.Nos.2277 and 2324 of 2020

sale deed in respect of the suit properties and the Plaintiff issued a reply dated 28.01.2014. In the first week of January 2014, the Defendant with the help of henchmen dispossessed the Plaintiff from the suit properties despite the Plaintiff's resistance. The Defendant is also attempted to alienate the suit properties in favour of third parties.

5.2.The Defendant disputed the contention of the Plaintiff that the Defendant entered into the sale agreement in respect of the suit properties for sale consideration of Rs.21,200/-. The entire sale consideration was paid to the Plaintiff by the Defendant. The Plaintiff handed over the possession of the suit properties. From 12.01.1995, based upon the sale agreement the Defendant is in possession and enjoyment of the suit properties and he is cultivating the suit properties, paying the revenue tax. The cause of action pleaded by the Plaintiff is wrong. The Defendant did not dispossess the Plaintiff as alleged by the Plaintiff. The Plaintiff tried to sell the suit properties to the third parties. Therefore, the Defendant sent legal notice dated 06.01.2014. The Plaintiff sent reply notice dated 31.01.2014. The Defendant had filed the suit seeking relief of Specific



C.R.P.Nos.2277 and 2324 of 2020

Performance based on the sale deed dated 12.01.1995 by filing suit in O.S.No.22 of 2014. The Defendant is in lawful possession and enjoyment of the suit properties. He had also perfected his title by way of adverse possession. Hence, the suit is liable to be dismissed.

6.The learned District Munsif, Vandavasi, Tiruvannamalai District, had taken both the suits for trial as joint trial. Issues were framed. After appreciation of evidence, the learned District Munsif, Tiruvannamalai, dismissed the suit filed by the Petitioner herein in O.S.No.22 of 2014 and decreed the suit filed by the Respondent herein in O.S.No.31 of 2014 thereby restraining the Defendant in O.S.No.31 of 2014/Petitioner herein from in any manner alienating or encumbering the suit properties. Also directing the Defendant//Petitioner herein to hand over the possession of the suit properties to the Plaintiff/Respondent herein within one month from the date of decree. Failing which, Plaintiff would be at liberty to execute the decree as per law. The Decree Holder in O.S.No.31 of 2014 on the file of the learned District Munsif, Vandavasi, filed E.P.No.8 of 2020 in O.S.No.31 of 2014 before the learned District Munsif, Vandavasi, for execution of the



C.R.P.Nos.2277 and 2324 of 2020

decree. The Judgment Debtor filed counter in E.P.No.8 of 2020 stating that he had filed appeal which is numbered as A.S.No.10 of 2020 and pending on the file of the learned Sub Judge, Cheyyar, and till the appeal is disposed, the Execution Petition shall not be executed. Therefore, sought to dismiss the E.P.No.8 of 2020 as the appeal is pending. Also the Defendant in the suit in O.S.No.31 of 2014 filed E.A.No.23 of 2020 in E.P.No.8 of 2020 seeking stay of the execution of the decree stating that the Judgment Debtor had invested huge amount by levelling the field in order to suit it for cultivation and in order to make the land fertile. If the E.P.No.8 of 2020 is allowed, the Judgment Debtor will be put into irreparable loss. Therefore, he sought stay of the execution of the decree. The learned District Munsif, Vandavasi, had dismissed the E.A.No.23 of 2020 and ordered execution of the decree and delivery of possession by 22.01.2020. Batta within 3 days, as per order dated 16.12.2020. Aggrieved by the same, the Revision Petition No.2324 of 2020 was filed by the Judgment Debtor – Dhanusu.

7.It is the contention of the learned Counsel for the Petitioner that the Execution Court/learned District Munsif, Vandavasi held that the Petition



C.R.P.Nos.2277 and 2324 of 2020

under Order 41, Rule 5(2) of C.P.C. is not maintainable since the Petitioner had filed appeal, the time limit for appeal ends as the appeal is preferred.

The Court ought not to have proceeded with the Execution Petition while the appeal against the judgment and decree sought to be executed is pending before the Appellate Court. Also, it is stated that notice was ordered by the Sub Court, Cheyyar in A.S.No.10 of 2020 and he also filed I.A.No.29 of 2020 seeking stay of the decree which is pending before the Appellate Court in A.S.No.10 of 2020. The Decree Holder proceeding the Execution Petition in a hurried manner without affording sufficient opportunity to the Petitioner. Therefore, he seeks to set aside the fair and final order dated 16.12.2020 made in E.A.No.23 of 2020 in E.P.No.8 of 2020 in O.S.No.31 of 2014.

8.C.R.P.No.2277 of 2020 is filed by the Judgment Debtor/Defendant in O.S.No.31 of 2014 seeking to reject the E.P.No.8 of 2020 in O.S.No.31 of 2014 on the ground that the execution Court ought not to have proceeded with the Execution Proceeding while the appeal filed by him in A.S.No.10 of 2020 against the Judgment and Decree is pending before the Appellate



C.R.P.Nos.2277 and 2324 of 2020

Court. The Execution Court failed to see that the appeal in A.S.No.10 of 2020 is pending and notice was ordered by Sub Court, Cheyyar. Also the Petitioner herein had filed I.A.No.29 of 2020 praying for stay of the decree. The Execution Court had proceeded with the E.P.No.8 of 2020 in a hurried manner without affording sufficient opportunity to the Petitioner. Therefore, he seeks to reject the E.P.No.8 of 2020 in O.S.No.31 of 2014 on the file of the learned District Munsif, Vandavasi.

9.In support of his contention, the learned Counsel for the Petitioner/Defendant/Judgment Debtor relied on the reported rulings of this Court in **1999 (1) MLJ 747 [M.Nazruddin v. Idol of Arulmighu Navaneedha Krishnasami and others]**.

10.The learned Counsel for the Respondent/Decree Holder submitted that the suit in O.S.No.22 of 2014 filed by the Petitioner herein was dismissed and the suit in O.S.No.31 of 2014 filed by the Respondent herein was decreed. The Petitioner had filed E.A.No.23 of 2020 to stay the operation of the E.P.No.8 of 2020 with an ulterior motive to delay the



C.R.P.Nos.2277 and 2324 of 2020

execution and he had not filed the appeal within the time. Therefore, the Execution Court had rightly rejected the claim of the Judgment Debtor to stay the execution of the E.P.No.8 of 2020. The E.P.No.8 of 2020 was ordered only after expiry of the appeal time. In the appeal, the Judgment Debtor, who is the Appellant had only filed I.A.No.29 of 2020 in A.S.No.10 of 2020 in which the Appellate Court had not at all granted interim stay. When the Appellate Court is seized of the appeal, the Appellate Court is within its discretion to consider the stay of the operation of the decree in O.S.No.31 of 2014. The Appellate Court had not granted any interim stay. Therefore, the Executing Court/trial Court is within its discretion to order execution of the decree after expiry of the appeal time. The learned Counsel for the Respondent relied on the discussion in the judgment by the learned District Munsif, Vandavasi, Tiruvannamalai which reads as under:

“The Plaintiff claims that as per the sale agreement, the possession of the suit properties was handed over to him and the present suit has been filed seeking relief of part performance. The Counsel for the Defendant has contended that when the Plaintiff claims that the possession of the suit properties was handed over to him as per the sale agreement, the sale agreement ought to have been registered. Hence, it is not admissible in evidence. The sale agreement was entered into between the Plaintiff and Defendant on



C.R.P.Nos.2277 and 2324 of 2020

12.01.1995 and it is an unregistered sale agreement. As per the amendment in the year 2001 to Section 17(1-A) of the Registration Act, the sale agreement requires registration, when the possession of property is handed over to the purchaser as part performance as per Section 53A of the Transfer of Property Act.

In the present suit the Plaintiff claims that the sale agreement was entered into between the Plaintiff and Defendant on 12.01.1995 ie., prior to the amendment of Section 17(1-A) of the Registration Act of the year 2001. Hence, the contention of the Counsel for the Defendant that the sale agreement ought to have been registered is not sustainable. The decision cited by the Counsel for Defendant in this regard are not applicable to the facts and circumstances of the case.”

11. The claim of the Judgment Debtor was rejected by the learned District Munsif, Vandavasi, holding that the claim of sale agreement dated 12.01.1995 for which notice was issued only on 06.01.2014 demanding specific performance after a period of 19 years was rejected. Also the learned District Munsif, Vandavasi, had rejected the claim of the Judgment Debtor in E.P.No.8 of 2020 which reads as under:

“The Respondent/Judgment Debtor filed an application under Order 21, Rule 26 and Order 41, Rule 5(2) of CPC and the same is taken on file. Heard the Counsel for the Petitioner as well as the Counsel



C.R.P.Nos.2277 and 2324 of 2020

for the Respondent. Petition in E.A.No.23 of 2020 dismissed. In the counter, the Respondent/Judgment Debtor has stated that he has preferred appeal before the Subordinate Court in A.S.No.10 of 2020 since the appeal is pending the executing Court cannot proceed with the execution of decree. It is settled law that the filing of appeal would not amount to stay of execution of the decree. In the above circumstances, this Court orders delivery. Delivery by 22.01.2020. Batta within three days.”

While so, filing of these Civil Revision Petitions under Article 227 of the Constitution of India is not maintainable. When the suit in O.S.No.22 of 2014 filed by the Petitioner herein was dismissed and the suit in O.S.No.31 of 2014 filed by the Respondent herein, who is the Defendant in O.S.No.22 of 2014, was decreed, both the Civil Revision Petitions are not maintainable. Therefore, the learned Counsel for the Respondent sought to dismiss both the Civil Revision Petitions as not maintainable.

12.On consideration of the rival submissions and on perusal of the typed set of papers, the contention of the learned Counsel for the Revision Petitioner is not found acceptable. Also, the reliance placed on by the learned Counsel for the Petitioner in **1999 (1) MLJ 747 [M.Nazruddin v.**



C.R.P.Nos.2277 and 2324 of 2020

Idol of Arulmighu Navaneedha Krishnasami and others] is not applicable

WEB CODE

to the facts of this case. It is a case where the Judgment Debtor/Defendant sought stay of the execution of the Execution Proceedings which was filed on the basis of the ex parte decree. The contention was to stay the Execution Proceedings till the Petition to set aside the ex parte order is allowed by the trial Court. The Petition to set aside the ex parte decree is still in SR stage. Therefore, the Execution Court in the reported ruling had rejected the contention of the Judgment Debtor/Defendant. Here the facts are different. The Revision Petitioner herein had contested the suit. He is the Plaintiff in O.S.No.22 of 2014 and Defendant in O.S.No.31 of 2014. The suit in O.S.No.22 of 2014 had been filed on the basis of the alleged sale agreement dated 12.01.1995 which was rejected by the learned District Munsif, Vandavasi and the very same learned District Munsif had ordered execution on the ground that the Petitioner in the Civil Revision Petitions as Appellant before the learned Sub Judge, Cheyyar had not obtained stay of the execution of the decree. The Execution Court need not consider grant of stay or differ the execution of the decree and the Judgment Debtor had filed appeal after expiry of appeal time and had not obtained stay from the



C.R.P.Nos.2277 and 2324 of 2020

appellate Court. Therefore, placing reliance on the provision of Order 21, Rule 26 and Order 41, Rule 5(2) of CPC the learned District Munsif, Vandavasi, had rightly rejected the contention of the learned Counsel for the Petitioner. Therefore, this Court need not exercise the discretion under Article 227 of the Constitution of India thereby set aside the order of the learned District Munsif, Vandavasi. In the light of the above discussion, both these Civil Revision Petitions are liable to be dismissed.

In the result, **both the Civil Revision Petitions are dismissed.** No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2022

SRM

Index : Yes / No

Internet : Yes / No

To

1.The District Munsif,
Vandavasi.

2.The Sub Judge,
Cheyyar.

15/17



WEB COPY



C.R.P.Nos.2277 and 2324 of 2020



WEB COPY



C.R.P.Nos.2277 and 2324 of 2020

SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Orders made in
C.R.P.Nos.2277 and 2324 of 2020**

25.11.2022