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C.R.P. (NPD) No.2818 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2021

Delivered on : 28.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.2818 of 2021

and

C.M.P.No.20430 of 2021

S.Jayababu

... Revision Petitioner

Vs.

S.Sampathkumar

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 28.09.2021, in E.A.No.3357 of 2018 in E.P.No.2601 of 2014, passed by the XXV Assistant Judge, City Civil Court, Chennai (incharge of XXVI Assistant City Civil Court, Chennai).

For Petitioner : Mr.M.Prabhakar

For Respondent : Mrs.G.Sumithra

ORDER

This Civil Revision Petition has been filed against the order, dated 28.09.2021, in E.A.No.3357 of 2018 in E.P.No.2601 of 2014 in



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O.S.No.4203 of 2008, passed by the XXV Assistant Judge, City Civil Court, Chennai (Full-Additional charge of XXVI Assistant City Civil Court, Chennai).

2.For the sake of convenience, the petitioner shall hereinafter be referred to as “defendant” and the respondent shall be referred to as “plaintiff”.

3.The facts leading to the filing of the present Civil Revision Petition are as follows :

- Admittedly, the suit property was originally settled in favour of one Dhanalakshmi Ammal by her father Panduranga Mudaliyar, vide registered settlement deed, dated 14.05.1970, along with a common pathway to be used by all the parties of the settlement deed.
- The plaintiff purchased the suit property from the said Dhanalakshmi Ammal, vide registered sale deed, dated 10.09.2003.
- The defendant, who was looking after the tenancy in the suit premises before the purchase, did not hand over the possession to the plaintiff, even after the purchase of the said property by the plaintiff.



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- Hence, the plaintiff filed the suit for declaration of title, recovery of possession, damages and other reliefs, against the defendant.
- The defendant remained *ex parte* in the suit and the suit came to be decreed *ex parte* on 20.01.2012.
- The plaintiff filed E.P.No.2601 of 2014 for execution.
- Thereafter, the defendant has filed the impugned application in E.A.No.3357 of 2018 for dismissal of E.P.No.2601 of 2014, stating the said Dhanalakshmi Ammal has sold only the house portion to the plaintiff, but not the common pathway, which is in exclusive possession of the defendant, and hence, the decree is not executable.
- The trial Court, after contest, dismissed the said application, by order, dated 28.09.2018.
- Challenging the said order of dismissal, the defendant has filed the present Civil Revision Petition.

4.The learned counsel for the defendant/revision petitioner submitted that the suit property was mortgaged by the said Dhanalakshmi Ammal to the defendant in the year 1998 for an amount of Rs.2,50,000/- and since then, the defendant is in possession of the property. The learned counsel



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further submitted that the sale deed, dated 10.09.2003, was executed by the said Dhanalakshmi Ammal in favour of the plaintiff, behind his back. It is the main contention of the learned counsel that the said Dhanalakshmi Ammal has sold only the house property to the plaintiff, but not the pathway, which is actually in possession of the defendant. Therefore, the decree obtained by the plaintiff on the strength of the sale deed, dated 10.09.2003, is only for the house and not for the pathway, hence, the decree is not executable and prayed for dismissal of the Execution Petition.

5.Per contra, the learned counsel appearing for the plaintiff/respondent repudiated the contentions of the learned counsel for the defendant/petitioner and submitted that the rights of the common pathway has also been sold by the said Dhanalakshmi Ammal in favour of the plaintiff, vide the sale deed dated 10.09.2003. The vendor had conveyed all her rights including easementary and common pathway rights along with the property to the plaintiff under the said sale deed and hence, the decree is entirely executable. The learned counsel submitted that the defendant has filed the impugned application only in order to prolong and protract the execution and prayed for dismissal of the Civil Revision Petition.



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6.Heard the learned counsel on either side and perused the entire materials available on record.

7.Admittedly, the defendant has not contested the suit, which led to decreeing of the suit *ex parte* on 20.01.2012. During the course of execution proceedings, the defendant has come up with this impugned application for dismissal of the Execution Petition mainly on the ground that the pathway has not been sold by the said Dhanalakshmi Ammal to the plaintiff and it is now in exclusive possession of the defendant. The defendant has admitted the title of the said Dhanalakshmi Ammal over the suit property and also the pathway. The defendant also admits the sale of the suit property by the said Dhanalakshmi Ammal in favour of the plaintiff, but only disputes that the pathway is not sold under the sale deed. Though the defendant claims that he is in possession of the suit property and the said pathway by way of mortgage, he has failed to prove his case during trial before the trial Court and chose to remain *ex parte*.



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8.Now, during execution, the merits of the case cannot be gone into, but the only question is whether, the pathway is a part of the sale deed, on the strength of which, the decree has been passed. The Execution Court has categorically found on verification of the sale deed (Ex.P1) that the said Dhanalakshmi Ammal has alienated the right over the common pathway also in favour the plaintiff. Therefore, the question raised by the defendant during the course of execution proceedings under Section 47 of Code of Civil Procedure, has been rightly answered by the Execution Court, against the defendant.

9.Therefore, this Court does not find any infirmity or illegality in the order passed by the Execution Court. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2022

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To



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The XXVI Assistant Judge,
City Civil Court,
Chennai.

S. KANNAMMAL, J.



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