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S.A.No.342 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Second Appeal No.342 of 2017
and
Civil Miscellaneous Petition No.8113 of 2017

V.R.Palaniselvam

Versus

... Appellant

1.P.C.Jain

2.Santhosh Lata Jain

...Respondents

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree made in A.S.No.38 of 2016, dated 07.11.2016, on the file of the XVII Additional City Civil Court, Chennai and confirming the order in E.A.No.5043 of 2013 in E.P.NO.3586 of 2012, dated 05.01.2016 on the file of the X Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Janarthanan
For Respondent : Mr.K.Bijai Sundar
For Caveator : Mrs.R.Sunitha Sundar



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JUDGMENT

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The Second Appeal has been filed by an obstructor, who obstructed execution of a decree in E.P.No.3586 of 2012 in O.S.No.1043 of 2004, on the file of the X Assistant City Civil Court, Chennai.

2. O.S.No.1043 of 2004 had been filed by the respondents herein seeking specific performance of an Agreement of Sale, dated 14.06.2000.

3. The said Agreement of Sale was with respect to flat, bearing No. A-1 in the 3rd floor, in Door No.1579, Silver Oak Apartment, 13th Main Road, Anna Nagar West, Chennai 600 040 with built up area of 525 sq.ft., together with undivided share of land of 304 sq.ft., and more properly described in the decree of the said order.

4. The suit seeking specific performance was decreed. Thereafter, seeking recovery of possession, E.P.No.3586 of 2012 had been filed. Since the appellant herein obstructed delivery of possession, E.A.No.5043 of 2013



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had been filed under Order XXI Rule 97 of the Code of Civil Procedure to remove obstruction.

5. That application was allowed. Subsequently, the appellant herein had filed A.S.No.38 of 2016, on the file of the XVII Additional City Civil Court, Chennai.

6. He suffered an adverse Judgment before the First Appellate Court, necessitating, filing of the present Second Appeal.

7. The learned counsel for the appellant stated that the appellant was a bonafide purchaser and that he had purchased the property for valuable consideration from the erstwhile owner represented by a Power of Attorney agent. The power of attorney agent is incidentally the brother of the appellant herein. It is stated that the purchase was also without notice or without knowledge of the decree for specific performance.



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8. These facts were revealed to him only when the notice in the Execution Petition was issued and thereafter, claiming title, he had obstructed execution of the decree.

9. The learned counsel stated that the purchase was done after verifying the encumbrance certificate and as a matter of fact was made with loan obtained from a Bank where again, the title deeds of the property was scrutinized and legal opinion was given that the vendor had marketable title and only after that, did the appellant purchase the property for adequate consideration.

10. It is also the grievance of the learned counsel that the application seeking to remove the obstruction was allowed primarily on the ground that the appellant herein had not examined as a witness, his own brother who was the power of attorney agent/vendor who executed the sale deed in his favour.

11. It is therefore claimed by the learned counsel that opportunity may be granted to rectify that particular observation of the learned Trial Judge and



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examine that brother/Power of attorney agent/executor of sale deed through which, the present appellant derived title to the suit property.

12. I hold that giving that opportunity would not come to any assistance to the appellant herein. The decree had been obtained in a suit which had been filed in the year 2004. There is no issue raised that the said decree was obtained either by fraud or by collusion.

13. Consequent to the said decree, an Execution Petition was filed seeking recovery of possession.

14. All those proceedings had been lawfully instituted in Courts of competent jurisdiction. Thereafter, finding that the appellant was in possession again, taking advantage of Order XXI Rule 97 of the Code of Civil Procedure, the respondents had filed E.A.No.5043 of 2013 to remove obstruction.

15. In an application filed under Order XXI Rule 97 of the Code of Civil Procedure, the obstructor cannot claim that he has no knowledge about



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the decree. If it is found, that his obstruction is unlawful and that the decree holder had obtained the decree by proper procedure lawfully recognized, then, the pendulum swings in favour of the decree holder and a direction has to be issued to remove obstruction.

16. Both the Courts below have concurrently found that the obstruction is without justification.

17. This Court cannot keep its eyes closed to the labour of the 1st and 2nd respondents in obtaining a decree for specific performance and seeking execution of the decree. The suit was instituted nearly 18 years back and unless bonafide reasons are given, there cannot be any obstruction to execution of such a decree.

18. The appellant herein can always proceed against his vendor to enforce the indemnity clause found in the sale deed but certainly, cannot claim title over the property. The title vests with the respondents. Once the title vests with the respondents and on sale deed being executed in lawful manner,



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then, the respondents are entitled to take possession.

19. I do not find any reason to admit the Second Appeal and the same is liable to be dismissed.

20. Accordingly, the Second Appeal is dismissed. The Judgment of both the Courts below are hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2022

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Index:Yes/No

Speaking Order : Yes/No

To

- 1.The XVII Additional City Civil Judge, Chennai.
- 2.The X Assistant City Civil Judge, Chennai.
- 3.The Section Officer,
VR Section, High Court of Madras.

C.V.KARTHIKEYAN,J.,

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