



C.R.P. (NPD) No.2376 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. (NPD) No.2376 of 2017

V.Hemabindu

W/o Vijayakumar Reddy

. . . Petitioner/Petitioner/ 3rd Defendant

Vs.

L.Mohan

S/o (Late) Lakshmanan

. . . Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition has been filed under Section 115 of the Constitution of India, against the fair and decreetal order dated 10.02.2017 made in I.A.No.1437 of 2012 in O.S.No.6540 of 2009 made by the IV Assistant City Civil Court, Chennai.

For Petitioner	:	Mr.G.Saravanakumar
For Respondent	:	Ms.R.V.Rukmani for Mr.P.B.Ramanujam

ORDER

This Civil Revision Petition has been filed, to set aside the order dated 10.02.2017 made in I.A.No.1437 of 2012 in O.S.No.6540 of 2009 on the file of



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the IV Assistant City Civil Court, Chennai.

2.The Revision Petitioner herein is the 3rd defendant in the suit filed by the respondent/plaintiff, for the relief of specific performance against the 1st defendant and to declare the sale deed dated 20.09.2000 executed by the 2nd defendant in favour of the 3rd defendant is not binding on the plaintiff and other consequential reliefs.

3.In the suit, the defendants were not served with proper notice, and they were set as exparte. To set aside the exparte decree, the 3rd defendant/Revision Petitioner took steps under Order IX Rule 13 of CPC, stating that notice was not properly served on her and the same was returned as no such person. Because, after the marriage, she was residing in a different address. Therefore, no notice was served neither in the suit proceedings nor in the execution proceedings. Having come to know about the suit proceedings, she filed an application in I.A.No.1437 of 2012 to condone the delay, but the same was not appreciated by the Court below and dismissed the said application stating that 3rd defendant was



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already aware of the proceedings. Infact, the said application was strongly opposed by the plaintiff that having known about all the proceedings, the 3rd defendant has not contested the suit.

4.The Revision Petitioner/3rd defendant did not raise any objection even in the execution proceedings and notice was not properly served, they remained exparte, sale deed also executed in favour of the plaintiff. The Trial Court by appreciating the facts and circumstances of the case, dismissed the application filed to condone the delay of 500 days in filing the petition to set aside the exparte decree.

5.Challenging the order of the Trial Court, the 3rd defendant/Revision Petitioner has preferred this Civil Revision Petition.

6.The learned counsel for the Revision Petitioner/3rd defendant would submit that the petitioner has purchased the property, even before filing of the suit. The respondent/plaintiff purposefully not served summons to the



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defendants with proper address. The petitioner is not residing in the address, which was given in the plaint. Therefore, the learned counsel prayed to allow this petition, to prove his defence in the suit.

7.The learned counsel for the respondent/plaintiff would submit that before filing the suit, he issued notice to the defendants 1 to 3 and the owner of the property is 1st defendant alone, who gave reply and other defendants remained exparte. Suit summons were also taken to all the defendants, but they were not appeared inspite of notice. After execution of the sale deed, the petitioner/3rd defendant purposefully filed this application, to harass the plaintiff and the same was rightly rejected by the Trial Court.

8.Heard both sides and perused the materials available on record.

9.On perusal of case records, it is seen that the suit is of the year 2009. The plaintiff filed the suit for specific performance and declaration against the defendants 1 to 3. According to the 3rd defendant, she was not served with



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notice with correct address, but the summons were returned as no such person.

Based upon the exparte decree, execution petition was filed against the 1st defendant alone and the sale deed got executed through Court of law. In that execution proceedings, as pointed out by the 3rd defendant, she was not added as party. For that, the learned counsel for the plaintiff would submit that as per the decree, the 1st defendant, being the owner of the property alone was prosecuted and as against him, decree was passed. So, there is no necessity to implead other two defendants, who are not connected with the suit property. Furthermore, the plaintiff did not accept the alleged sale deed stands in the name of the 3rd defendant. Therefore, in my considered opinion, the 3rd defendant is necessary party in the execution proceedings. Admittedly, with regard to title of the property, fair opportunity has to be given to the 3rd defendant to prove her claim. Because, she is claiming better title over the property, than the plaintiff. Further, notice was not served on the correct address of the defendants. The Trial Court, without appreciating all these facts erroneously dismissed the application, without giving opportunity to the 3rd defendant, to contest her case.



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In this case, sale deed was executed in favour of the plaintiff, but all the parties were not included in the execution petition. Mere obtaining exparte decree, will not confer the right over the property, that too without adducing proper evidence, to prove their claim. It is settled preposition of law that even to avail the equitable remedy of specific performance, the plaintiff is bound to prove his case by producing his own evidence.

10.A bare perusal of the plaint itself would go to show that the plaintiff has not produced any document to show that on the date of the suit, the plaintiff is in possession of the suit property. Further, in the entire pleadings, there is no reason on the side of the plaintiff, why he has chosen to file the suit, after a period of 10 years, from the date of sale agreement. He has not averred any explanation for the delay period of 10 years. Therefore, the pleadings and circumstances is to be proved with proper evidence. No reason also assigned by the trial Judge to grant reliefs in favour of the plaintiff.

11.Hence, the order passed by the learned IV Assistant Judge, City Civil



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WEB COPY Court, Chennai in I.A.No.1437 of 2012 dated 10.02.2017 is hereby set aside and the present Civil Revision Petition stands allowed. The 3rd defendant is directed to file her written statement within a period of eight weeks from the date of receipt of a copy of this order. Thereafter, the learned Trial Judge, by appreciating the evidence to be adduced on either side, shall dispose of the case, on merits and in accordance with law, within a period of six months. No costs.

26.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

- 1.The IV Assistant Judge, City Civil Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court of Madras.



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T.V.THAMILSELVI,J.

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