



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.262 of 2017

and

C.M.P.No.1165 of 2017

1.J.Kalamani

2.N.Jothimani

... Petitioners/Petitioners/Third Parties/Third Parties

v.

1.S.Rajeswari

... 1st Respondent / 1st Respondent / Judgment Debtor / Defendant

2.K.Selvaraj

... 2nd Respondent / 2nd Respondent / Decree Holder / Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in E.A.No.100 of 2013 in E.P.No.16 of 2012 in O.S.No.669 of 1995 dated 08.09.2016 on the file of the Principal Sub Court, Thiruppur.

For Petitioner

.. Mr.V.Raghavachari

For R1

.. Mr.K.Balakrishnan

**ORDER**

WEB COPY The revision petition has been filed questioning an order in E.A.No.100 of 2013 which Execution Application had been taken out by the revision petitioners in E.P.No.16 of 2012 which Execution Petition had been taken out in O.S.No.669 of 1995 which is on the file of the Principal Sub Court, Tiruppur.

2.The said E.A.No.100 of 2013 had been filed taking advantage of Order 21 Rule 58 of CPC. Order 21 Rule 58 CPC, relates to adjudication of claims with respect to attachment of any property during the course of execution of a decree. The parties who filed such application under Order 21 Rule 58 have a burden to discharge to impress that the Court should not proceed further with executing a decree already passed by the Court without hearing them. It can also be termed as an application filed by a third party to a suit or decree who is of the opinion that his / her valuable right is sought to be usurped by one of the decree holders.

3.The circumstances necessitating filing an application under Order 21 Rule 58 CPC in the aforementioned original suit were as follows. The aforementioned O.S.No.669 of 1995 had been filed by the 2nd respondent



herein / plaintiff against the 1st respondent herein / defendant seeking specific performance of an agreement dated 19.09.1994.

4.Let me continue to refer to the said two parties as plaintiff and defendant.

5.The plaintiff, as stated had instituted a suit for specific performance. In the course of perusal of the records, it appears that at some point time, the defendant had raised a plea that she was not aware of the proceedings of the suit.

6.Be that as it may, the suit was decreed exparte on 26.10.1995. Further proceedings in execution were put by the plaintiff. Since the defendant had not participated in the suit, she also did not come forward to execute the sale deed placing an obligation on the Court to execute the sale deed in favour of the plaintiff. The sale deed was executed on 20.11.1996.

7.Thereafter, E.P.No.21 of 1999 was filed to take possession of the



property. Possession was also delivered on 22.02.1999. The Execution Petition was therefore terminated. Nothing further survived for adjudication in O.S.No.669 of 1995. The plaintiff thought he could rest at peace.

8. Thereafter, to enjoy further fruits of such successful decree obtained, he proceeded to deal with the property and the revision petitioners were the fortunate or unfortunate parties who had come forward to purchase that particular property. That sale by the plaintiff in the suit in favour of the present revision petitioners was on 16.10.2001, when two separate sale deeds were executed by the plaintiff.

9. Having received consideration from the revision petitioners, the plaintiff walked away. That is understandable. He had obtained a decree for specific performance. He had taken possession of the property. He had sold the property. He had received the consideration for the property. He had, in effect, been a beneficiary of the judicial system.

10. But, the defendant then woke up. The defendant filed an



application to set aside the ex parte decree. That was in the year 2008 in I.A.No.1223 of 2008. To re-capture the sequence, the agreement was in the year 1994, the suit was in the year 1995, the suit was decreed in the year 1995, the sale deed by the Court was executed in the year 1996, possession was also taken in the year 1999 and thereafter, the plaintiff had sold the property to the revision petitioners in the year 2001.

11.In 2008, after clear seven years, after those particular sale deeds in favour of the revision petitioners, the defendant filed I.A.No.1223 of 2008 to set aside the ex-parte decree. The plaintiff did not appear in that application. The decree was therefore set aside by an order dated 03.07.2009.

12.It is only understandable that the plaintiff did not appear, since he had already sold the property. This fact of sale was not informed to the Court. Since the decree had been set aside, the defendant having realized that the possession of the property had been handed over, filed an Execution Petition in E.P.No.16 of 2012. In that particular Execution Petition, the revision petitioners / purchasers of the year 2001 filed E.A.No.100 of 2013 under Order 21 Rule 58 seeking to be heard before



such re-delivery is granted or ordered.

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13.It was their contention that they were bonafide purchasers and on the date of their purchase, no ligation existed and as a matter of fact, there was no litigation present two years prior to their purchase and also for nearly seven years subsequent to their purchase.

14.However, the learned Trial Judge appeared to have brushed aside all these contentions and had dismissed the said application filed under Order 21 Rule 58 of CPC.

15.In the instant case, the property had not been attached under Order 21 Rule 54 CPC, but still a claim subsists namely, that the revision petitioners had purchased the property on a particular date when there was no *lis* pending between the plaintiff and the defendant and a decree had been passed and the decree was subsisting which was passed lawfully by a Court of competent jurisdiction.

16.When such an application had been filed under the provisions,



Order 21 Rule 58 (2) CPC states that all questions arising between the parties shall be determined by the Court. This would naturally imply that the Court should frame the questions which have to be adjudicated. The questions would naturally arise on the basis on which the claim is made under Order 21 Rule 58 CPC and which claim is either denied or disputed by the respondent.

17. In the case, the claim is based on a lawfully executed sale deed pursuant to an ex parte decree in a suit and pursuant to an Execution Petition being filed to put that decree in execution and the Court having executed a sale deed in favour of the plaintiff, and subsequently, the Court having also put that particular plaintiff in possession of the property, and thereafter, that plaintiff having conveyed the property by way of registered sale deeds to the revision petitioners / claimants before the Trial Court.

18. These issues should have been examined by the Court. The dates should have been examined sequentially logically to find out whether any valuable right had accrued. These have to be examined on the basis of documents presented as evidence, which documents should pass the test of admissibility, proof and relevancy. This test can be applied only when the parties graze the witness box and produce



documents and offer themselves for cross-examination and permit the documents to be tested during cross-examination.

19. Here, none of the aforesaid steps have been taken by the learned Principal Sub Judge, Tiruppur. That is an error, which is apparent, and naturally, in this revision which has been filed under Article 227 of the Constitution of India this Court has to interfere with and has to set aside the same.

20. But since, the learned Trial Judge had given a finding that the defendant was not been put on notice in the suit, even without any specific reference to the suit summons or the address to which the suit summons had been forwarded, it would only be appropriate that all these issues are raised before the Trial Court once again and it would only be appropriate that the parties have an opportunity of being heard or effectively heard and that the issues which they raise are addressed by the Court.

21. This would necessitate that the revision has to be allowed. The order under revision is set aside and a direction to remand for fresh hearing of E.A.No.100 of 2013 is issued. I hope it would be done in manner known to law. The Court should answer all questions, which



arise between the parties and then pass an order in accordance with law.

If evidence is required, the parties may be permitted to let in oral and documentary evidence in manner known to law.

22.The Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

07.03.2022

Internet:Yes/No

Index:Yes/No

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To
The Principal Sub Court, Tiruppur.

C.V.KARTHIKEYAN, J.



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