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CRP (NPD) No. 3831 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 3831 of 2017

And

C.M.P.No. 17897 of 2017

1. T.Manickam

2. Jayalakshmi ... Petitioners/Respondents/Respondents 13 to 14

Vs

1. Ramasamy ... Respondent/Petitioner/Decree holder

Kuppammal (died)

2. Perumal

3. Selvam

4. Jayanthi

5. Rani

6. Anitha

7. Vanitha

8. Punitha

1/10



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9. Uma Maheswari

10. Sujatha

11. Priya

12. Chithra

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.07.2017 and made in E.A.No. 23 of 2017 in REP.No. 168/1997 in O.S.No. 28 of 1986 on the file of the District Munsiff Court, Harur.

For Petitioners : Mr. C.Umashankar

For 1st Respondent : Mr. A.Ilayaperumal

ORDER

The entire revision petition arises from a Civil Suit in O.S.No. 28 of 1986. Further proceedings in the Civil Suit are still pending on the file of the District Munsif Court, Harur.

2. The first respondent herein Ramasamy was the plaintiff in the said suit. The said suit in O.S.No. 28 of 1986 had been filed against five defendants and the relief sought was that there should not be any restraint on the plaintiff using the pathway, going from the house of the plaintiff to



Pennagaram road and further, that in the said pathway, there should not be any obstruction and that, the obstructions already put up by the defendants should be removed. It is thus seen that the suit was restricted to what was termed as a pathway which had been described as 'F' 'C' 'D' 'E'. The suit was valued for the purposes of valuation of Rs.800/- and the fixed Court fees under Section 25(d) and Section 27(c) of the Tamil Nadu Court Fees and Suits Valuations Act, 1955 had been paid.

3. A Judgment was pronounced on 26.06.1990 by the District Munsif, Dharmapuri. By the said Judgment, since the defendants did not appear, they had been set ex-parte and the District Munsif examined Exs. A-1 to A-3 and decreed the suit.

4. The plaintiff then filed E.P.No. 21 of 1991 and the said Execution Petition is now termed as R.E.P.No. 168 of 1997 on transfer on constitution of District Munsif Court at Harur. The said R.E.P.No. 168 of 1997 which in effect E.P.No. 21 of 1991 is still pending.



5. In the meanwhile, owing to efflux of time, the third and fourth defendants Mani and Murugesan died and their legal representatives were brought on record. This naturally brought the number of defendants from the original file filed to thirteen after excluding Mani and Murugesan, who were shown as defendants, but not serialised.

6. It appears that subsequently two individuals T.Manickam and M.Jayalakshmi had purchased the property from the plaintiff/Ramasamy and they were also impleaded as defendants and they were called subsequent purchasers. They had purchased the property, I am informed on 18.03.2013.

7. It is the grievance of Ramasamy, the original plaintiff, who had sold the property along with co-owners that not only the aforementioned pathway for which the suit was filed, but also a larger extent of land had been sold, but, however, the entire sale consideration had not been paid. It is the contention of the subsequent purchasers that the entire sale deed itself contains a covenant that the sale consideration had been paid.



8. Section 92 of the Evidence Act, 1872 naturally comes into play

which stipulates that no amount of oral evidence can be let in contrary to the covenants in a written document. I will leave that at that.

9. Be that as it may, in R.E.P.No. 168 of 1997, an endorsement was made that the original owners had handed over the property to decree holder, who had sold it to the subsequent purchasers and that therefore, nothing further survives and that the Execution Petition should be terminated. That was protested by the respondent/plaintiff, who still contended that substantial portion of about 30 lakhs of the sale consideration had not been paid and therefore protested termination of the Execution Petition.

10. The matter reached this Court by way of a Civil Revision Petition in C.R.P.No. 3040 of 2014. By an order dated 29.04.2016, a learned Single Judge of this Court had examined the rival contentions, namely, the contention that the subsequent purchasers had actually purchased the property, that though inspite of a sale deed having been executed and sale



deed containing a covenant with respect to the payment of sale consideration, there was still a contention that the entire sale consideration had not been paid. The learned Judge therefore opined that therefore, Section 55 of the Transfer of Property Act, 1882 would come into effect and that therefore, the unpaid vendors can exercise the rights under the said provision and that when such a contention is raised, termination of the Execution Petition was not proper and that every party should be given an opportunity to let in all evidence with respect to not only the sale but more particularly also whether the sale consideration had been fully paid or not fully paid and therefore, set aside the termination of the Execution Petition. The Executing Court was directed to give full opportunity to all the parties to present all their submissions.

11. Thereafter, the decree holder, who had to lead evidence and who contended that sale consideration had not been fully paid, filed an application under Order VII Rule 14(3) of the Civil Procedure Code seeking permission to file documents and to bring them on record. A string of 66 documents had been filed.



12. It is the contention of the Decree Holder that though sale deed

had been executed, the consideration had not been paid. The learned Single Judge in the earlier Revision Petition also stated that the issue of possession should be decided by the Executing Court. Among these 66 documents, it is quite difficult to find out which actually are relevant documents. But at any rate, pending the present Revision Petition, I am informed that the 66 documents have been marked as Exhibits.

13. The learned District Munsif must kept in mind that every document does not take the colour of evidence and can be termed as evidence only when they are admissible in law, only when they they are relevant and are proved in manner known to law and only when they are genuine. If they fail any of the above tests, the documents, even if given Exhibit Numbers, cannot be considered during the course analysing the evidence recorded.

14. Now, the District Munsif at Harur will naturally have to undertake that particular exercise to sift the exhibits to find out which



actually are relevant and which have been proved in manner known to law and which are actually admissible in evidence.

15. Let him / her therefore first enter into that particular venture and examine each one of the documents. Thereafter, let the proceedings go further in manner known to law. It is hoped that merely because the matter has been remanded back by the learned Single Judge, the parties cannot widen the scope of the Execution Petition. It must be kept in mind that the Execution Petition can have as its four boundaries, the decree which is sought to be executed. It cannot travel beyond them. Let therefore, the District Munsif, Harur, to examine the decree which has been passed and pass an order with respect to the execution of that particular decree. If there are additional issues or if possession as an issue is raised then, the party, who claims to be in possession should prove possession. Documents relating to possession alone must be examined.

16. There has been an averment in C.R.P.NPD.No. 3040 of 2014 relating to Section 55 of the Transfer of Property Act, 1882. Since that order stands, it may not be proper on my part, to examine in detail the nature of



documents advanced or the factors which propelled the learned Single Judge to come to that conclusion.

17. Be that as it may, let the District Munsif, Harur actually determine the documents which are relevant directly to the issues of sale, possession and payment of consideration. These are the only three aspects which should be examined.

18. Let a finding be given on those three aspects and it is made clear that merely because the matter had been remitted, the parties have not been given leverage to widen the Execution Petition into a suit, which it is not. It still remains, an Execution Petition bound within the four corners of the decree passed in the suit. It must be also be kept in mind that the defendants in the suit had thought it judicious to remain exparte and therefore, the decree in the suit which was confined to a pathway in the plaint may now be examined by the District Munsif, Harur and further examine whether execution can beyond the decree or not. That is the simple issue which the District Munsif Court will have to examine.



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Vsg

19. Let the Execution Petition be posted if not on a day to day basis, at least with a gap of three working days in between any two adjournments. The parties must co-operate to permit the District Munsif, Harur, to devote some attention and to dispose of REP.No. 168 of 1997 on before 31.07.2022.

20. With the said observation, this Civil Revision Petition is disposed of. No costs.

28.02.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Harur.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

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