



C.R.P. No.2002 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1. M.Duraisamy (Died) vide separate sheet attached
2. D.Shanthi
3. D.Radhika
4. D.Thanikachalam
5. D.Madhavi
6. D.Rajesh
7. D.Vinothkumar
8. D.Alexpandian

...Petitioners

**Petitioners 3 to 8 brought on record as LR's of the deceased
P-1 viz. M.Duraisamy vide court order dated 16.06.2022
made in CMP.No.14157 of 2021 in CRP.No.2002 of 2019.**

Vs.

S.Vasanthi

...

Respondent

PRAYER: Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 10.04.2018 passed by the Subordinate Judge, Kancheepuram in E.A.No.242 of 2016 in



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E.P.No.175 of 2012 in O.S.No.49 of 2007.

WEB COPY

For Petitioners : Mr. S.L.Sudharsanam

For Respondent : Mr.R.Prabakar

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 10.04.2018 passed by the Subordinate Judge, Kancheepuram in E.A.No.242 of 2016 in E.P.No.175 of 2012 in O.S.No.49 of 2007.

2. The learned counsel for the revision petitioners/Judgment debtor submitted that the respondent/decreed holder filed E.A.No.242 of 2016 in E.P.No.175 of 2012 for delivery of possession in respect of the suit property based on the sale deed was executed through Court in specific performance suit in O.S.No.49 of 2007 that was not maintainable since because the trial Court has not followed the procedure as contemplated under Order 21 rule 35 of CPC, it should have issued notice to the Judgment debtor in EP.No.175 of 2012 but it ordered for delivery without giving any notice as such is totally erroneous and liable to be set aside. Further, he also

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contended that the respondent/ plaintiff obtained the ex-parte decree to execute the sale deed and the petitioners/Judgement debtor also filed a petition to set aside the above said decree but the same was not numbered. Thereafter, the revision petitioners/Judgment debtors filed a petition under Section 47 r/w Section 151 of CPC prayed to dismiss the execution petition in E.P.No.175 of 2012. However, the Execution Court had dismissed the E.A.No.246 of 2018 filed by the petitioners/Judgment debtor and allowed the E.A.No.242 of 2016 which is not sustainable on merits. Hence, he prays to allow the revision petition.

3. The learned counsel for the respondent/Decree holder argued that originally in the year 2007, the respondent/plaintiff filed a suit in O.S.No.49 of 2007 on the file of the Subordinate Judge, Kancheepuram for the relief of specific performance and directing the defendants to execute the sale deed. Thereafter, the notice was served and the petitioners/Judgment debtor has not filed a written statement, hence, the ex-parte order was passed. After 5 years, they filed the execution petition to execute the said decree, accordingly, the sale deed was executed and taken delivery of possession.



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Hence, she filed E.A.No.242 of 2016 for delivery of possession of the property detailed in the scheduled in the said E.P.No.175 of 2012 on the basis of decree and Judgment in O.S.No.49 of 2007, which was taken on file, the defendants/Judgment debtor were set ex-parte for the reason that they already remained ex-parte in the suit. Therefore, without issuing notice, disposed the order for delivery and subsequently, the delivery was recorded. The Execution petition was also closed by following the proper procedure and the trial Judge had executed the decree, which needs no interference. Hence, he prayed to dismiss the revision petition.

4. Considering both side submissions, on perusal of the records, it reveals that from the beginning of the E.A.No.242 of 2016 the defendants/Judgment debtor were remained set ex-parte and 3 more occasions, the defendants/Judgment debtor attempted to file the petition to set aside the ex-parte decree and the same was returned, it could not be represented and there is a mistake on the side of the defendants.

5. Further, it reveals that in E.P.No.175 of 2012 filed by the



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respondents//plaintiff/deed holder to execute the sale deed and the notice was served to the petitioners/Judgment Debtor, they have appeared but they have not filed any objection specifically, Hence, they were already remained ex-parte and the sale deed was executed through Court to take delivery of the suit property. She filed E.A.No.242 of 2016 in that application, the trial Judge had ordered the delivery is extracted hereunder:-

"This petition has been filed by the petitioner under Order 21 Rule 35 CPC to deliver the E.P.Schedule mentioned property. Delivery recorded. E.A.242 of 2016 closed."

6. On seeing the above order of the trial Judge, it clearly reveals that the said application was taken on file and on the same day the petitioners/defendants/Judgment debtor were set ex-parte and delivery was ordered without issuing notice to the Judgment debtor for the reason that they have not filed any objection. Even assuming that the defendants/Judgment debtor were set ex-parte in the suit and not filed any objection in the execution court, it is duty of the Court issue notice to the Judgment Debtor, if any application is filed by the Judgment debtor. The



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trial Judge ought to have issued notice to the Judgment Debtor but he failed to do so. This Court is of the view that the trial Judge has not followed the proper procedure which is erroneous one. Hence, the order passed by the trial Judge in E.A.No.242 of 2016 in E.P.No.175 of 2012 is hereby set aside.

8. Accordingly, the trial Judge is directed to reopen the E.P.No.175 of 2012 and issue notice to the parties and dispose the case on merits within a period of three months from the date of receipt of a copy of this order. The parties are directed to co-operate with the proceedings.

9. With the above, the Civil Revision Petition is allowed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
msrm
To
The Subordinate Judge, Kancheepuram.



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T.V.THAMILSELVI, J.

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