



C.R.P.(NPD)No.1314 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.08.2022

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

C.R.P.(PD)No.1314 of 2019

Venugopal (Died)

1. Subbathal

W/o. Late Venugopal

2. Padmanabhan

S/o. Late Venugopal

3. Sivakumar

S/o. Late Venugopal

4. Raghunathan

S/o. Late Venugopal

(Cause title accepted vide court order
dt.26.02.2019 made in CMP.4254/2019
in CRP SR 94619/2016)

.. Petitioners

Vs

P.Irudayaraj

S/o.V.Paulraj

..Respondent



C.R.P.(NPD)No.1314 of 2019

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and docket order dated 15.11.2007 made in I.A.No.1021/2007 in O.S.No.268/2005 on the file of Principal Sub Judge, Coimbatore.

For Petitioners : Mr.M.V.Venkataseshan

For Respondent : Mr.M.Guruprasad
for M/s.C.Ramaraj

ORDER

This Civil Revision Petition has been filed by the legal representatives of the deceased sole defendant in the suit against the docket order dated 15.11.2007 made in I.A.No.1021/2007 in O.S.No.268/2005 on the file of Principal Sub Judge, Coimbatore.

2. The brief facts of the case are:

i) The suit was filed for specific performance of a sale agreement dated 14.03.2004 entered between the respondent/plaintiff and the defendant. The



C.R.P.(NPD)No.1314 of 2019

WEB COPY

defendant purchased the suit mentioned property from the respondent/plaintiff for a total sale consideration of Rs.3,69,000/-, to be executed within a period of three months. The respondent/plaintiff agreed for execution of the sale deed free of encumbrance, as the property was kept by the respondent/plaintiff under a mortgage loan with a Co-operative Society. As agreed between the parties, the respondent/plaintiff paid certain sums towards the mortgage loan as part payment of sale consideration and totally, he paid a sum of Rs.2,13,000/- and only a sum of Rs.1,56,000/- was to be paid towards balance sale consideration. However, the defendant demanded a sum of Rs.1,75,000/- for execution of sale deed. The respondent/plaintiff agreed to pay the said sum of Rs.1,75,000/- subject to production of the original sale deed by the defendant, after discharging the loan amount. But, the defendant failed to comply with the terms of the agreement.

ii) On coming to know from the reliable source that the defendant was trying to sell the suit mentioned property to a third party, even though the maximum amount of the sale consideration has been paid by the respondent/plaintiff, the suit was filed for specific performance of execution



C.R.P.(NPD)No.1314 of 2019

WEB COPY

of the sale deed on payment of balance sale consideration.

3. Before the trial Court, Exs.A1 to A8 were marked on the side of the respondent/plaintiff. On 20.12.2005, when the case was taken up for hearing, the sole defendant was called absent and hence, he was set ex parte. The trial Court passed the judgment and decree as follows:

"Proof Affidavit filed Ex A1 to A8 marked. Records Perused. Claim Proved decreed as prayed for with cost, 2 month time for Balance consideration and further 2 months for sale execution."

4. Since there was a delay in filing the lodgment schedule to deposit the balance sale consideration, the present interlocutory application was filed to condone the delay and to issue the challan to deposit the balance amount. The trial Court, vide the impugned docket order dated 15.11.2007, passed the following order:-

"Heard. Delay Condoned. Issue Challan if in order."

5. Aggrieved by the aforesaid order, this Civil Revision Petition has



C.R.P.(NPD)No.1314 of 2019

WEB COPY

been filed by the legal representatives of the deceased sole defendant, who died pending the suit.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

7. Learned counsel for the petitioners would submit that the suit property was owned by Venugopal, who is the father of the petitioners 2 to 4 and the husband of 1st petitioner. The defendant/Venugopal had entered into agreement of sale with the respondent. Venugopal wanted to return the advance consideration and exit and the respondent was also willing for the same. However, the respondent filed a suit for specific performance in O.S.No.268 of 2005 before the Principal Subordinate Judge, Coimbatore, against the sole defendant Venugopal. At that time, Venugopal was aged 86 years and was bed ridden and the entire suit was lost sight of by him due to his health problem. The suit summon was served in December, 2005 and thereafter, he was set exparte due to non filing of written statement. The



C.R.P.(NPD)No.1314 of 2019

WEB COPY

Court vide decree dated 20.12.2005 had granted two months' time to deposit the balance sale consideration of a sum of Rs.1,75,000/-. On 19.05.2006, Venugopal died and the petitioners herein were neither parties to the suit nor was having knowledge of the proceedings. The respondent who did not remit the balance sale consideration within the stipulated time, filed an application to condone the delay of 601 days in depositing the sale consideration making Venugopal as the respondent, who was already dead. The respondent was well aware of the death of sole defendant/ Venugopal as he was residing a few meters away from the defendant's house. He concealed the fact and filed I.A.No.1021 of 2007 on 12.10.2007 even after knowing the death of sole defendant who died on 19.05.2006 and the trial Court without issuing notice on the said application, allowed the same and the plaintiff had also deposited Rs.1,56,000/- on 28.11.2007. The extension order was obtained behind the back of the petitioner. Hence, the same is unsustainable in law. The decree/ order passed against a dead person is a nullity. When E.P. was filed by the respondent for execution of sale deed through court, these petitioners filed a petition under section 47 of CPC stating that the decree dated 20.12.2005 as



C.R.P.(NPD)No.1314 of 2019

WEB COPY

null and void. No doubt, the said petition was dismissed and these petitioners filed C.R.P.No.258 of 2016 and the said petition was also dismissed. Only at that time, the petitioners came to know about the extension order obtained by the respondent in I.A.No.1021 of 2007. Immediately, after getting leave of this Court, the petitioner filed the present revision. The defendant, Venugopal died on 19.05.2006 and the plaintiff/deGREE holder is living only three houses away from the house of Venugopal. So he was aware of the death of Venugopal. Without impleading the legal heirs, the respondent filed I.A.No.1021 of 2007 showing dead person as respondent and obtained order of condonation of delay on 15.10.2007, by playing fraud on the Court. Hence, the said order in I.A.No.2021 of 2007 is vitiated and the same is liable to be set aside.

8. Learned counsel for the petitioners would further submit that the respondent, as per pleadings has paid Rs.2,13,000/- to the deceased Venugopal. These petitioners are ready and willing to repay the said amount with interest at 12% without any prejudice. The impugned order is a non-



C.R.P.(NPD)No.1314 of 2019

WEB COPY

speaking order and therefore, non-est in law. The trial Court had become functus officio once a decree has been passed and the Court cannot condone the default in making the balance payment and can only extend the time for payment of the balance amount as per the decree, without prejudice to the rights of the parties. The petitioners have been prejudiced in such a manner that they will lose a valuable property under the guise of a court order, extending about 2 years to remit a small amount of Rs.1,75,000/-, which cannot be entertained in a suit for specific performance. Hence, the learned counsel would pray for allowing the civil revision petition by setting the order dated 15.11.2007.

9. In support of the above contentions, the learned counsel for the petitioner relied on the following decisions.

- i) AIR 1980 SC 512 (K.Kalpana Saraswathi v. P.S.S.Somasundaram Chettiar)
- ii) 1997 (3) SCC 1 (K.S.Vidyanandam & Ors Vs. Vairavan)



C.R.P.(NPD)No.1314 of 2019

WEB COPY

10. Per contra, the learned counsel for the respondent would submit that the defendant/Venugopal filed a suit for specific performance of sale agreement dated 14.03.2004 and this respondent had paid a sum of Rs.2,13,000/-, out of Rs.3,69,000/- even prior to the suit. The defendant remained exparte and a decree for specific performance was passed on 20.12.2005 directing the plaintiff to pay the balance sale consideration within two months. The respondent/plaintiff filed I.A.No.1021 of 2007 for extension of time to deposit and the same was allowed. Against which, E.A. No.689 of 2009 was filed stating that the decree is inexecutable, since the decree holder without impleading the legal heirs of Venugopal, who died on 19.12.2006 obtained extension, but the said petition was dismissed. This Court dismissed the said CRP on 17.06.2019 after considering all the contentions of the petitioners therein stating that the decree has reached finality and the petitioners have not filed any petition for rescinding the contract and thus, they cannot challenge the decree as inexecutable on the ground that the decree holder did not deposit the balance sale consideration within the time.



C.R.P.(NPD)No.1314 of 2019

WEB COPY

11. Learned counsel for the respondent would further submit that the order in I.A.No.1021 of 2007 was passed on 15.07.2007, but the revision has been filed only on 23.02.2016 and the same was numbered in the year 2019. Only to get over the limitation of 90 days, the petitioners have filed this revision. Learned counsel for the petitioner would further submit that the sale deed was executed by the Court in 2016 itself and the order in E.P. has not been challenged. Insofar as the specific performance decree is concerned, the Court does not lose its jurisdiction after the grant of decree or does it become functus officio. Section 28 of the Specific Relief Act enables the judgment debtor to file application for rescinding the contract if the decree holder does not deposit the sale consideration within the stipulated time. Further, extension of time is also governed by Section 28. Section 28 gives power for the Court to extend the time for payment of the amount. As long as the judgment debtor does not take steps to file an application for rescission, the Court has jurisdiction to extend the time. The contentions raised in this CRP have been raised in CRP.No.258 of 2016 where this Court has recorded that the decree holder filed I.A.No.1021 of 2007 seeking extension and that the



C.R.P.(NPD)No.1314 of 2019

WEB COPY

Court granted extension and the decree holder also deposited the amount and in E.P.212 of 2008, the sale deed was also executed. Further, the defendant did not file an application to set aside the exparte decree or petition under section 28. The order passed in CRP.No.258 of 2016 has become final and the present petition is hit by *res judicata*. Hence, he would pray to dismiss the CRP.

12. In support of his contentions, learned counsel for the respondents relied on the following decisions.

- i) 1997(9) SCC 217 (Sardar Mohar Singh V. Mangilal)
- ii) 2012(1) MWN (Civil) 787 (Siva Vs. Murali)
- iii) 2018 SCC Online Mad 13556)

13. On perusal of the records, it is seen that the order under challenge viz., order in I.A.No.1021 of 2007 was passed on 15.07.2007 and the present revision was filed in the year 2016 and the same was numbered in the year 2019. The sale deed was executed by the court in 2016 and the order passed



C.R.P.(NPD)No.1314 of 2019

WEB COPY

in E.P has not been challenged by the petitioners. As per Section 28, the judgment debtor can file an application for rescinding the contract if the decree holder does not deposit the sale consideration within the stipulated time but the petitioners have not taken any steps to file application for rescission. As long as the judgment debtor does not take steps for rescinding the contract, the Court has jurisdiction to extend the time. Moreover, all the contentions raised in this civil revision petition have already been raised by the petitioners in C.R.P.No.258 of 2016 filed before this Court, wherein the petitioners have challenged the order passed in E.A.No.789 of 2009 and this Court, on considering all the contentions raised by the petitioners had dismissed the said C.R.P. In the said C.R.P., it was recorded that the decree holder filed an application in I.A.No.1021 of 2007 seeking time to deposit the balance sale consideration and after obtaining permission from the court, the decree holder has also deposited the amount. It was also observed in the said order that the decree has become final and that the petitioners cannot challenge the decree as inexecutable on the ground that the decree holder did not deposit the balance sale consideration within the time. Under such



C.R.P.(NPD)No.1314 of 2019

WEB COPY

circumstances, this Court does not find any valid and justifiable reason to interfere with the order under challenge passed by the Court below. The decisions relied on by the learned counsel for the parties are distinguishable on facts and hence, they are not applicable to the facts of the present case.

14. In the result, the Civil Revision Petition is dismissed. No costs.

22.08.2022

Index :Yes/No
Speaking/Non-speaking order
vsi

To

1. The Principal Sub Judge, Coimbatore.



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C.R.P.(NPD)No.1314 of 2019

J.NISHA BANU, J.

(vsi)

C.R.P.(NPD)No.1314 of 2019

22.08.2022