



CRP(NPD)(MD)No.1239 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(NPD)(MD)No.1239 of 2022
and C.M.P.(MD)No.5081 of 2022

Sarabudheen @

Mohammed Sarabudeen

... Revision Petitioner

versus

Ramadhas (died)

R.Joseph

... Respondent

Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decreetal order dated 23.04.2022 made in E.P.No.69 of 2018 in O.S.No.227 of 2002 on the file of the Sub Court, Eraniel.

For Revision Petitioner : Mr.A.Balakrishnan

For Respondent : Mr.D.Saravanan

ORDER

The revision petitioner, who is the Judgment Debtor, filed this Civil Revision Petition against the order of delivery passed in E.P.No.



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69 of 2018 in O.S.No.227 of 2002 dated 23.04.2022.

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2. The revision petitioner herein is the defendant in the suit in O.S.No.227 of 2002 on the file of the learned Subordinate Judge, Padmanabhapuram. The said suit has been filed by one Ramadhas, vendor of the respondent herein, for specific performance and the same was decreed by the trial Court on 23.07.2004. Aggrieved over the same, the revision petitioner filed an Appeal Suit in A.S.No.218 of 2004 before the learned District Judge, Kanniyakumari at Nagercoil and the same was dismissed, by Judgment and Decree dated 02.09.2006. After the dismissal of the appeal suit, a sale deed was also executed on 16.11.2006. Against the dismissal of the appeal suit, the revision petitioner also filed a second appeal in S.A.(MD)No.1235 of 2006 before this Court and the same was dismissed by this Court, by Judgment and Decree dated 17.11.2016. Thereafter, an Execution Petition in E.P.No.69 of 2018 was filed by the respondent herein in the year 2018 and the same was ordered on 23.04.2022. Aggrieved over



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the same, the Judgment Debtor/revision petitioner has filed this Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner/Judgment Debtor submits that the suit schedule property is a dwelling house of the revision petitioner and its market value is more than Rs.1 crore. However, the plaintiff, a money lender, in order to grab the property, created a document fixing the value of the property as Rs.4,50,000/- and obtained the decree in favour of him. He further submits that the sale deed was executed in favour of the decree holder on 25.10.2006 and the sale was made absolute on 16.11.2006. As per Article 134 of the Limitation Act, the Execution Petition ought to have been filed within one year from the date of sale confirmation. But, the Execution petition was filed belatedly, i.e. in the year 2018, after the lapse of 12 years. Therefore, in lieu of Article 134 of the Limitation Act, the Execution Petition cannot be maintained and the order of delivery passed by the Executing Court is barred by law.



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4. The learned counsel appearing for the respondent/Decree-holder submits that the suit for specific performance was filed in the year 2002 and it was decreed in the year 2004 and appeal filed by the judgment debtor/revision petitioner was also dismissed by the Appellate Court in the year 2006. Thereafter, the sale deed was executed on 16.11.2006. The revision petitioner has also filed a Second Appeal before this Court in S.A.(MD)No.1235 of 2006 and the same was dismissed by this Court on 17.11.2016. Thereafter, the Execution Petition was filed on 16.11.2018. If time is calculated from the date of execution of the sale deed, the respondent is having time for filing Execution Petition till 16.11.2018 and after the Judgment of this Court dated 17.11.2016 passed in S.A.(MD)No.1235 of 2006, the Execution Petition is filed well within the time. In support of his contention, he also relied upon the Judgment of a Division Bench of this Court in the case of *N.S.Karuppanna Gounder vs. Nagammal and another* reported in *1996 II CTC 1*.



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5. This Court considered the rival submissions made.

6. In the decision of a Division Bench of this Court in ***N.S.Karuppanna Gounder vs. Nagammal and another*** reported in ***1996 II CTC 1***, relied upon by the learned counsel appearing for the respondent, it has been held as follows:

“We are unable to subscribe or affix our seal of approval to the views expressed by Sathar Sayeed, J. in the Judgment in ***Devendra v. Badrabagu, 1986 ILR (2) Mad.72***. We are of the firm view that Article 136 of the Limitation Act should receive a fair and liberal and not a technical construction with a view to enable the decree holder to reap the fruits of his decree and it will not be in consonance with the principles of just interpretation to strain the language of the Article in favour of the Judgment-debtor who had not paid his just dues. As already seen, this Article is a specific article requiring all the applications for the execution of decrees or orders, where the decree-holder acquires a vested right under the decree and that right out not to be taken away except



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under a clear and unambiguous enactment. In the present case, it is not in dispute that the order of delivery has been passed within one year from the date when the sale became absolute viz. on 9.11.1981. E.A.No.333 of 1982 was filed on 13.03.1982 for delivery and the delivery was ordered in that application on 19.03.1982. The said application was dismissed on 31.03.1983, as auction purchaser had not assisted to effect delivery. Therefore, the very purpose for which E.A.No.333 of 1982 was filed (for delivery) was served with the passing of the order of delivery and what remained thereafter was only the ministerial act of putting into effect of the said order for delivery. It is also to be noted that there is no period of limitation for reminding the Court to do its ministerial act of completing delivery of possession pursuant to the order passed for delivery of possession. Even viewed otherwise, that the order directing delivery of possession required to be executed as per the law of limitation, Article 136 of the Limitation Act is the only proper provision to be applied because that Article applies not only to a decree, but also to an order of Court, which is executable as a decree. It is also not in dispute that the



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first petition was filed in time. As observed by this Court in ***Perumal vs. Ramachandra Padayachi***, 1981 (1) MLJ 65 what the decree holder purchaser sought for is not an order for delivery which *ex hypothesi*, he had already obtained in the earlier application. Therefore, he had approached the Court with the present application for executing the earlier order for delivery passed by that very executing Court. Therefore, Article 134 of the Limitation Act has no application as it applies only to an application for delivery. It does not apply when that particular application had already been ordered and something had to be done with that order or pursuant to that order. In this view, Article 136 of the Limitation Act was the proper provision to be applied, because it applied not only to a decree but also to an order of a Court, which was executable as an order. Since the execution application was filed well within time, it must be regarded as an application to execute the earlier order of delivery duly passed by the executing court.”

7. In view of the decision cited above, there is no error in entertaining the execution petition. Therefore, this Court is not



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inclined to entertain this petition. With regard to the contention raised by the learned counsel appearing for the revision petitioner that the market value of suit property is more than Rs.1 crore, neither this Court nor the Execution Court can go into that factual aspect.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2022

Index : Yes / No.
Internet : Yes / No.
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To

The Sub Court,
Eraniel.



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B.PUGALENDHI, J.

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