



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (NPD) (MD) .No.2409 of 2017

V.Krishnasamy

... Petitioner/Petitioner/Plaintiff

Vs

1.K.Revathy

2.K.Saravanan

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Case is filed under Section 115 of Civil Procedure of Code, to call for the record and set aside the fair and decreetal order dated 20.10.2017 in E.P.No.36 of 2017 in O.S.No.123 of 2012 on the file of the Additional Subordinate Judge, Kumbakonam and allow this Civil Revision Petition with costs.

For Petitioner : Mr.H.Lakshmi Shankar
For Respondents : Mr.A.Saravanan

O R D E R

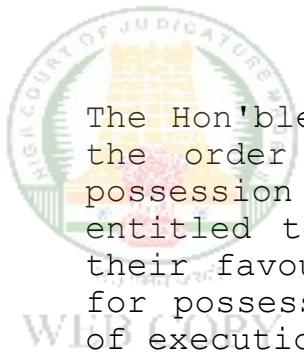
The revision petitioner is the decree holder is a suit for specific performance.

2.The decree holder filed E.P.No.80 of 2015 for execution of sale deed by the Court. The said E.P was allowed on 23.03.2016. Thereafter, the learned Additional Subordinate Judge, Kumbakonam has executed a sale deed on 16.02.2017 in favour of the decree holder.

3.On strength of the sale deed executed by the Court, the decree holder filed E.P.No.36 of 2017 for delivery of the property. The said execution proceedings were resisted by the judgment debtor on the ground that there is no separate prayer for recovery of possession in the plaint and hence, there is no decree for recovery of possession in favour of the plaintiff. When there is no specific or separate prayer for recovery of possession, merely on the basis of a decree for specific performance, delivery cannot be granted.

4.After hearing both parties, the learned Subordinate Judge relied upon a judgment reported in **2017 (3) CTC page 729 in Vasantha Vs.Manickam @ Thandapani** to arrive at a finding that a separate prayer is required for ordering delivery of possession of a property pursuant to a decree for specific performance. This order is under challenge in the Civil Revision Petition.

5.The learned counsel for the revision petitioner placed on record the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No.2726 of 2022 dated 05.04.2022, in which, the judgment of our High Court reported in **2017 (3) CTC Page 729** has been reversed.



The Hon'ble Supreme Court was pleased to hold in Paragraph No.30 of the order that in a suit for specific performance, the prayer possession is inherent and therefore the decree holders are entitled to possession in pursuance of the sale deed executed in their favour. The Hon'ble Supreme Court also found that the prayer for possession is ancillary to the prayer for specific performance of execution of the sale deed.

6.However, the learned counsel for the respondents had contended that unless there is a separate prayer, execution proceedings for delivery of property cannot be ordered.

7.I have heard the learned counsel appearing on either side.

8.In a judgment relied upon by the Executing Court has been reversed by the Hon'ble Supreme Court by judgment dated 05.04.2022 holding that the prayer for possession is ancillary to the prayer for specific performance and there is no need for separate prayer for delivery of possession. In view of the recent judgment of the Hon'ble Supreme Court, the order passed by the Executing Court is un-sustainable in law and the same is set aside. Accordingly, E.P.No.36 of 2017 stands allowed. This Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (Admin I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Additional Subordinate Judge
Kumbakonam

Copy To
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-21581[F] dated
27/04/2022)

C.R.P(NPD).(MD).No.2409 of 2017
26.04.2022

MK/18.05.2022/2P/5C