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C.R.P.No.80 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.80 of 2023
and
C.M.P.No.590 of 2023

J.Banu

...

Petitioner

Vs

Md.Kalleemullah

...

Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to allow this Civil Revision Petition by setting aside the impugned order and decretal order dated 26.10.2022 made in E.P.No.648 of 2022 on the file of X Assistant City Civil Court at Chennai.

For Petitioners : Mr.B.Ramamoorthy



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ORDER

The Civil Revision petition has been instituted challenging the impugned order and decretal order dated 26.10.2022, passed in E.P. No.648 of 2022, in O.S. No.7519 of 2012. The revision petitioner is the defendant in the suit and judgement debtor.

2. The respondent is the plaintiff who instituted a suit for specific performance. It is not in dispute that the suit was decreed on 09.02.2017 itself. The respondent/decreed holder filed E.P. No.648 of 2022 for execution of the Decree passed in O.S. No.7519 of 2012. The Execution Court adjudicated the issues and considered the objections raised by the revision petitioner. The objections mainly raised by the judgement debtor is that though the decree holder has filed E.P. No.3406 of 2017 for the execution of sale deed earlier, the decree holder has not registered the sale deed and on that ground, the execution proceeding is to be dismissed. The judgement debtor further raised the ground that the schedule of property mentioned in



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the execution petition differs from the decree passed in the suit. Both the contentions raised on behalf of the judgement debtor are considered by the Execution Court and the findings of the Execution Court reveal that the respondent/decreed holder has filed the copy of the registered sale deed dated 08.01.2020, which was executed in favour of the decree-holder by the Court concerned.

3. On verification and on perusal of the sale deed registered by the Court, it was found that the said sale deed was duly registered at the office of the Sub-Registrar, Purasaivakkam in Document No.655 of 2020. The decree-holder had produced the encumbrance certificate. On verification, the execution of sale-deed and registration of sale-deed in favour of the decree-holder finds a place in the encumbrance certificate also. The difference in schedule of property in a decree and execution proceeding were also verified by the Execution Court and were found to be incorrect. Thus, the Execution Court formed an opinion that the objections raised by the judgement debtor is only to protract the proceedings and accordingly, allowed the execution



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proceedings filed by the respondent/decreed holder and ordered to deliver vacant possession of the schedule property through the Court to decreed holder, by 28.11.2022.

4. The scope of the execution proceeding cannot be expanded for the purpose of adjudicating the issues raised in the suit between the parties. Once, the decree became final in execution proceedings, Execution Court has to consider whether there is any impediment for execution under section 47 of CPC. Therefore, the Execution Court is not empowered to adjudicate the disputes or issues raised between the parties in the suit or reconsider the issues or otherwise. In the present case, the judgement debtor raised two doubts regarding the sale deed registered pursuant to the decree passed in the suit, and both the grounds were considered and rejected by the Trial Court which is in consonance with the facts and circumstances and there is no perversity in respect of the findings in this regard.



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5. The Execution Court has already directed the revision petitioner/ judgement-debtor to deliver vacant possession of the schedule mentioned property through Court to the decree holder by 28.11.2022. Already one and a half months lapsed. Therefore, the revision petitioner is directed to deliver the vacant possession schedule mentioned property to the respondent decree holder within a period of 15 days from the date of receipt of a copy of this order. In the event of failure in handing over the possession, the respondent is at liberty to file a contempt petition.

6. Accordingly, the Civil Revision Petition stands **dismissed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order

Internet : Yes

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S.M.SUBRAMANIAM, J.

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X Assistant City Civil Court, Chennai.

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