



WEB COPY



CMSA No.17 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.M.S.A.No.17 of 2010
and M.P.No.1 of 2010

A.Premila

.... Petitioner

Vs

1. Justina Singaraj
2. Catherine Nathan
3. Rosaline Francis (Died)
4. S.J.Arokiadass
5. Jerry Nirmal
6. Preeti Robert
7. Joe Benjamin

(Respondents 5 to 7 brought on record
as LR's of the deceased R-3 vide court
order dated 25.04.2022 made in CMP
No.6405 of 2022 in CMSA)

... Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under Order 43 of CPC read with Section 100 of CPC against the fair and Decretal order dated 07.04.2010 made in CMA No.1 of 2007 on the file of Subordinate Judge, Ranipet, Vellore District, reversing the fair and decretal order dated 14.02.2006 made in E.A.No.72 of 2005 in E.P.No.13 of 2004 in O.S.No.654 of 1980 on the file of District Munsif, Arakkonam.



CMSA No.17 of 2010

For Petitioner : Mr.M.Sriram
For Respondents : Mr.T.M.Hariharan
For R.1, R.2 and R.4
: R.3 died, steps taken.
: R.5 to R.7 - not ready in notice.

ORDER

The decree holder in O.S.No.654 of 1980 is the appellant before me. The proceeding arises out of an execution.

2. O.S.No.654 of 1980 was a suit for Specific Performance of an agreement of sale. The said suit was decreed on 25.02.1987. A direction was given to pay the balance sale consideration of Rs.55,000/- on or before 25.05.1987 and to take delivery of property. Aggrieved by judgment and decree, a regular appeal was preferred before this Court in A.S.Nos.394 and 395 of 1987. The said appeals were dismissed by judgment dated 16.12.2002.

3. Pending first appeal, in A.S.No.394 of 1987, a stay application was moved in C.M.P No.8351 of 1987. The stay application was heard along with vacate stay petition in C.M.P No.12093 of 1993. A condition was imposed that



CMSA No.17 of 2010

on payment of the suit costs, the stay will be made absolute. Suit costs was not paid and therefore, the stay was vacated on 08.02.1994. Pursuant to the stay having been vacated, an execution petition in E.P.No.90 of 1994 was filed. The said execution petition was originally filed before the Subordinate Court, Arakkonam. Due to change in pecuniary jurisdiction of the Court, the same was transferred to District Munsif Court, Arakkonam.

4. It was the case of the petitioners that they were not aware of the transfer of the decree to Arakkonam and therefore, they were not in a position to appear before the Court on 28.02.2005. Hence they filed an application under Order 21 Rule 106 read with Section 151 of Civil Procedure Code. The learned District Munsif dismissed E.A.No.72 of 2005 (application filed under Order 21 Rule 106 of CPC) by order dated 14.02.2006. Against which, Civil Miscellaneous Appeal was preferred in CMA No.1 of 2007. The CMA was allowed on 07.04.2010 and remanded to District Munsif Court, Arakkonam. Aggrieved over the same, the present CMSA No.17 of 2010 has been filed. The order under challenge is not a decree or even a deemed decree. Therefore, an appeal is not maintainable. Nonetheless, it is revisable by the Court. Hence, I



CMSA No.17 of 2010

WEB COPY

heard it as a revision.

5. I have my own doubts as to whether CMSA is maintainable, but for the purpose that the order I am going to pass, it is irrelevant because even if it is to be treated as a Civil Revision Petition, it would still lie before this Court. Therefore, I hear the matter on merits.

6. Heard Mr.M.Sriram for the appellant and Mr.T.M.Hariharan for the respondents 1, 2 and 4.

7. Mr.M.Sriram, learned counsel would bring to my notice that it matters not whether notice was issued to the petitioner in the execution petition since the execution petition was pending from 1990 and the decree holder had deposited all the money as required as per the decree and further after serious contest, the first appeal before this Court was dismissed on 16.12.2002.

8. Mr.T.M.Hariharan would submit that a fraud had been played on the Court by virtue of the fact that the persons whom his clients had not authorised



CMSA No.17 of 2010

viz., M/s. Ammer and Jayasankar, had appeared on their behalf. He adds, the appellants were not aware of the said counsel nor had any connection with them. He would state that a drama of appearance came to be enacted at the instance of one Mr. Ananthan, who is the counsel and the husband of the decree holder Premila in O.S.No.654 of 1980. He would therefore plead that the order of the remand be sustained and CMSA be dismissed.

9. I have carefully considered the arguments of either side.

10. It is not in dispute that O.S.No.654 of 1980 was decreed by a judgment and decree of the learned Additional Subordinate Judge, Vellore dated 25.02.1987. It is further admitted case of both sides that as against O.S.No.654 of 1980, an appeal was preferred before this Court in A.S.Nos.394 and 395 of 1987. The said appeals were dismissed after contest on 16.12.2002. In fine, the decree for specific performance had been confirmed and has attained finality.

11. The execution petition was initiated on account of the fact that the respondents did not comply with the interim order of this Court. The stay



having been vacated, the successful decree holder in O.S.No.654 of 1980 had filed Execution Petition in EP No.90 of 1994. The said execution petition was languishing for more than 15 years and finally as the judgment debtors did not contest the same, they were set exparte and a direction was given that the sale deed be executed in EP No.13 of 2004 dated 28.02.2005.

12. In the affidavit filed in support of E.A.No.72 of 2005, there is no plea that fraud had been played either on the Court or on the party. The only plea for absence is that they had not engaged a lawyer in order to defend their case. The very fact of their absence and the plea that they had not engaged a lawyer implies that summons were duly served on them for hearing date. They were aware that the execution proceedings were initiated but still they did not take any effort to come and defend the same.

13. The issue whether they engaged an advocate or not becomes irrelevant because the point still remains that notice was served and the judgment debtors did not appear before the Court for a proceeding, which had been pending nearly for 25 years. The Court cannot keep waiting for judgment



WEB COPY

debtors to engage lawyer and come before it in order to contest the proceedings.

14. I have to recollect that the suit is of the year 1980; the decree is of the year 1987, stay was vacated in the year 1994; appeal was dismissed in the year 2002 and finally sale deed was executed in the year 2005. In this long period of 25 years, the judgment debtors had attempted every trick known in the book for delaying the proceedings. In fact, the unfortunate persons are the decree holders because even though stay was vacated some time in 1994, they could not get the decree executed till 2005.

15. I would also look at this through another angle. The appeal was contested and dismissed on 16.12.2002. The decree holder is entitled to put the decree in execution without notice to other side when it is a contested decree under Order 21 Rule 22 of Civil Procedure Code. Therefore, in any event, no prejudice would be caused to the judgment debtors by the fact that the sale deed had been executed by the Court below.

16. Apart from that Mr.M.Sriram states that delivery of the suit property



CMSA No.17 of 2010

was also taken on 08.01.2008, pursuant to an application filed for delivery of possession in E.P.No.90 of 1994.

17. I have absolutely no intention to unsettle settled matters, which will be the effect in case I confirm the order of the lower appellate Court.

18. Consequently, CMSA No.17 of 2010/Revision is allowed. The order of the remand passed by the lower appellate Court in CMA No.1 of 2007 dated 07.04.2010 is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2023

1/3

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



CMSA No.17 of 2010

WEB COPY

To

1. The Subordinate Judge,
Ranipet, Vellore District.
2. The District Munsif,
Arakkonam.



WEB COPY



CMSA No.17 of 2010

V.LAKSHMINARAYANAN,J.

SR

CMSA No.17 of 2010

21.08.2023