



CRP. No.1395 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 1395 of 2023

Rameshkumar

...Petitioner

Vs

1. Mangalam
2. G. Surya @ Bhuvaneswari
- 3.K.Gopala Krishnan
- 4.K. Sampath Kumar
- 5.K. Usha Ravi

...Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 24.01.2023 E.A.Sr. 1594 of 2022 in E.P No. 3536 of 1991 in O.S No. 9038 of 1979 filed by the respondents on the file of the Hon'ble X Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Velmurugan

For R1 : Mr.P.V.Balasubramanian, Senior counsel
for T. Karthikeyan



CRP. No.1395 of 2023

ORDER

WEB COPY Challenging the impugned order dated 24.01.2023 passed X Assistant City Civil Judge, Chennai, in E.A.Sr. 1594 of 2022 in E.P No. 3536 of 1991 in O.S No. 9038 of 1979, the petitioner filed this petition.

2. The petitioner herein is the third party to the suit proceedings who filed E.A Sr. 1594 of 2022 in E.P No. 3536 of 1991 in O.S No. 9038 of 1979, on the file of the X Assistant City Civil Court, Chennai, against the respondents herein/decreed holders under Order 21 Rule 97 & 101 r/w Section 47 of CPC to dismiss the EP No. 3536 of 1991 as the decree itself is non-executable on account of the defective schedule of the property, for want of correct survey numbers, door number, description of properties location and identification of property and also filed another application to pass an order of interim stay of all further proceedings in EP No. 3536 of 1991. After considering the submissions on either side, the Court below rejected the above petitions. Challenging the petitioner/third party filed this petition.

3. The learned counsel for the petitioner submitted that the decree itself is non-executable on account of the defective schedule of the property, for want of correct survey numbers, door numbers, description of properties,



CRP. No.1395 of 2023

location and identification of property but the executing court without giving fair opportunity to the petitioner herein to establish the same, rejected the petition without taking on file as such is unfair and liable to be set aside. Furthermore, he submitted that as a absolute owner he has nearly 1009 square feet in new survey number 22/2 old survey number 2081 with old door number 24, 24- A, 24-B and new door number 53,54,55,62 by way of purchase from one karthikeyan through two sale deeds of the year 2014. Thereafter he is in possession and enjoyment of the said land and building right from the date of said purchase. In fact, the said property was originally partitioned between the owners and the schedule B of the said partitioned deed and thereafter it was purchased by the petitioner in the year of 2014. subsequently, the petitioner has changed the property tax, water tax, electricity connections in the petitioner name in respect of the property which was purchased in the year 2014. The entire mutation of records was completed and the petitioner has been carrying out iron scraps business in the said property in the name and style of ARK enterprises and the property tax is assessed by the corporation of Chennai and electricity connections is stands in the name of the petitioner. While being so, the petitioner came to know about the EP proceedings pending between the respondent and some



CRP. No.1395 of 2023

other parties. Further, the petitioner shocked and surprised that the eviction proceedings have been initiated with the help of Police authorities. Hence the property was purchased by the petitioner for valid consideration and also he is in possession of the property his possession cannot be disturbed in view of any orders passed in the E.P proceedings hence the decree is not binding him and property having door number 62, Old slaughter House Road, Royapuram, Chennai 600 013, in view of the fact that the petitioner was absolute owner of the property which is subject matter of the above EP proceedings and EP is not maintainable. Further, the respondents by suppressing the above facts and real description of the property admitted to execute the decree in respect of the property belongs to the petitioner absolutely as defective title, identification and also non executable decree. Hence, the petitioner is entitle to invoke Section 47 of CPC under Order 21 Rule 97 & 101 r/w Section 47 of CPC to dismiss EP No. 3563 of 1991 without appreciating the above facts the Court below erroneously rejected the same. Hence, he prayed to set aside the order of the Court below in E.A SR No. 1594 of 2023.

4. By way of reply, the learned counsel for the defendants 4 and 10



CRP. No.1395 of 2023

submitted that the alleged purchase was made in the year 2004 which is during the pendency of the execution proceedings hence it was hit by lis pendence and the petitioner is not entitle to file such petition against the decree holder nor he is bonafide obstructor. Further, he submitted that suit properties along with other properties was joined owned and possessed by the C.M.A Krushnan and his elder brother Kumarasamy. After their demise fourth respondent along with his mothers and brothers won 41/2 grounds and thereabouts on the western side of the scheduled property. Whereas, in respect of his cousin brother late k.Jayaraman was owned 4 ½ grounds or thereabouts totally 9 grounds as per the patta which were inherited from our ancestors of the said properties. Further, the suit for partition was filed by C.M.A Kushnan consequent upon the above properties were mortgaged to one sudarlal by registered mortgaged deed dated 12.06.1950 and the same was registered. Since the above properties was mortgaged by the fourth respondent's parternal uncle and his father was a minor at that relevant point of time and hence a suit for partition for all the properties including one mortgaged with the Sundarlal was also one of the item of the suit for partition in C.S No. 338 of 1951 and the same was ended in compromise, based on that compromise decree was passed. But the above properties



CRP. No.1395 of 2023

were continued to be under mortgage without any benefit to any persons much less to Kushnan. Pursuant to the above suit, the said C.M.A Kirushnan initiated suit in O.S No. 9038 of 1979 for redemption of mortgage on the file of XIV City Civil Court, Chennai, for the mortgaged properties and the same contested by Sundarlal after his death his legal heir Meera Bai and the same was decreed in favour of C.M.A Kirushnan. Thereafter Apex court confirmed the same. Thereafter, the fourth respondent along with his brothers and sisters filed E.P petition in E.P No. 3536 of 1991 on the file of X Assistant Judge, City Civil Court, Chennai, for execution of delivery. But the above E.P remains unexecuted since because obstructory thwart their efforts. Thereafter he filed E.A No. 1854 of 2018 for break open and police aid in E.P No. 3536 of 1991 and the same was allowed. But the police is not available to them and getting delayed from executing warrant of delivery. Thereafter, the respondents filed WP No. 27510 of 2022 seeking direction to police officials to provide adequate rapid action force to execute the delivery warrant and the same was ordered but the same was not complied by the police officials the respondents filed contempt petition and this Court grant time to comply with the earlier directions. In the meanwhile, the petitioner filed the present petition seeking



CRP. No.1395 of 2023

to dismiss EP No. 3536 of 1991 as the decree itself non executable and stay all further proceedings and the same was dismissed by the Court. Hence, it is pertinent to note that the suit was decreed in favour of the respondent in the year 1986 but till the respondents are not able enjoy the fruits of the decree the petitioner intentionally filed the petition to drag on the delivery of possession. Hence, prays to dismiss this petition.

5. On perusal of records, it reveals that one CMA. Krushnan filed a suit for redemption of mortgage against the Sundarlal and his legal heirs viz, Meera Bai in the year 1979. Thereafter, Sundarlal died, his legal heir Meera Bai contested the case and the suit was decreed in favour of the plaintiff/fourth respondent's father. Further more, the compromise decree of partition in C.S No. 338 of 1951 was passed between the fourth respondent's father Kirushnan and his brother Kumarasamy. The said mortgage suit in O.S NO. 9038 of 1979 was decreed in favour of the plaintiff in the year 1983 with time to deposit the amount. Accordingly, preliminary decree was passed. Thereafter, E.P. No. 36/1996 was filed against the defendant but the said property was under the occupation of the tenant/obstructors', hence E.A No. 1854 of 2008 was filed, to remove the same the decree holder



CRP. No.1395 of 2023

initiated the proceedings break open with police aid same was granted in their favour in the year 2018. The petitioner as alleged purchaser purchased the said property from Karthikeyan son of V.Ramalingam pending suit but on seeing the records the petitioner's predecessor in title including their name along with original owner in the revenue records, fraudulently by proceeding of Tahsildar in the year 1987 and the same was cancelled by the Collector in the year 2013, also confirmed by the commissioner of land administration. Thereafter, obstruction made by the Ramalingam and others also ordered to be removed in E.P. No. 1251 of 1987 filed by the decree holders against which appeal was preferred in A.S no. 722 of 2005 and same also dismissed so also CMSA No. 11 of 2007 also dismissed. Therefore, it reveals that at the instigation of the said Ramalingam and others present petitioner claiming himself as absolute owner with false allegation that description and identification of the property is incorrect thereby decree is non executable. Admittedly, the petitioner claiming title from one Karthikeyan son of Ramalingam, but in fact the obstruction caused to the plaintiff by the Ramalingam was already removed by this Court. Therefore all the facts reveals that the decree holder/respondents herein were not able to realise the fruits of the decree for the past 40 years due to the obstruction caused by the



CRP. No.1395 of 2023

third parties who have no right to title of the property. It clearly reveals that decree holders are legal heirs of the original plaintiff who obtained preliminary decree as well as final decree in the year 1986 from that onwards they are fight before the Court of law to execute the same and to remove the obstruction made by the third parties till date they are fighting before the court to take delivery of the possession of the property in spite of direction given by this court the decree holder is not able to get possession of the property by executing the decreee. Even as per the contention of the petitioner he had purchased the property during pendency of the suit proceedings hence his purchase is hit by *lis pendence*. As observed above already direction was given by the Court for police aid to assist the executing proceedings decree is pending due to non compliance decree holder initiated contempt proceedings and the same also pending before this Court. However, police authorities inclined to execute the decree as per the direction given by this court. Hence, the rejection made by the executing Court is maintainable needs no interference. This petition is dismissed as no merits.

12. In result, this Civil Revision petition is dismissed. No Cost.



CRP. No.1395 of 2023

Consequentially, connected miscellaneous petition is closed.

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02.11.2023

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TO

The X Assistant City Civil Court, Chennai.

T.V.THAMILSELVI,J.



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CRP. No.1395 of 2023

Pbl

CRP. No.1395 of 2023

02.11.2023