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C.R.P.(NPD)Nos.1292, 1308 & 1310



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)Nos.1292, 1308 & 1310 of 2019
and C.M.P.Nos.8435, 8548, 8585 of 2019**

M/s.Sri Chitra Mills
Represented by its Partner
Sri.S.Kumar, Door No.8/368
Raja Theatre Thottam
Gandhi nagar, Tiruppur-2.

... Petitioner in
all the three CRPs.

Vs.

1. N.Kaliammal @ Kaliyathal

A.Natarajan (died)

2. N.K.Sengaliappan
3. N.Shankar

... Respondents in
all the three CRPs.

Common Prayer: Civil Revision Petition Nos.1292 & 1308 of 2019 are filed under Article 227 of the Constitution of India to strike out the petitions in E.A.Nos.31 &32 of 2018 in E.A.No.176 of 2013 in E.P.No.185 of 2008 in O.S.No.568 of 1992 pending on the file of the I Additional Sub Court at Coimbatore.

C.R.P.No.1310 of 2019 is filed under Article 227 of the Constitution of India to strike out the petition in E.A.No.1 of 2019 in E.A.No.32 of 2018 in E.A.No.176 of



2013 in E.P.No.185 of 2008 in O.S.No.568 of 1992 pending on the file of the I
Additional Sub Court at Coimbatore.

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In all the three CRPs.

For Petitioners : Mr.G.Ilamurugu

For R1 : Mr.T.M.Hariharan

COMMON ORDER

Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent.

2. The plaintiff/civil revision petitioner and husband of the 1st respondent entered into an agreement of sale on 04.11.1987. Subsequently, since the agreement of sale was not executed, a suit for specific performance for the agreement of sale was filed in O.S.No.568 of 1992. The said suit for specific performance was decreed on 09.12.2003. Aggrieved by the decree for specific performance, a regular appeal was filed in A.S.No.115 of 2004 before the learned Principal District Judge at Coimbatore. The said appeal was dismissed on 21.08.2007 confirming the judgment and decree of the trial Court. As against the concurrent finding, a Second Appeal was preferred in S.A.No.1283 of 2008. That Second Appeal also ended in dismissal confirming the decree for specific performance.



3. Not being satisfied with the judgments of the High Court, lower Appellate Court as well as the trial Court, the unsuccessful defendants preferred SLP(Civil)..../2010, C.C.No.19220 of 2010. The said SLP was also dismissed on 03.01.2011.

4. After the decree for specific performance had attained finality before the Supreme Court, the 1st respondent stepped into the picture. She filed the suit in O.S.No.550 of 2011 on the file of the learned II Additional Subordinate Judge, Coimbatore, staking a claim over the property. To that proceedings, the frustrated decree holder in the previous proceedings took out an application in I.A.No.60 of 2012 for rejecting the plaint. The said application was allowed and the suit stood rejected on 21.07.2014.

5. Mr.G.Ilamurugu, learned counsel for the petitioner will bring to my notice that regular appeal was preferred as against that suit in A.S.No.10 of 2015 on the file of the III Additional District Court, Coimbatore and that appeal suit was also dismissed on 27.06.2022 *albeit* for default. Continuing the efforts to frustrate the decree holder, these applications were filed after the proceedings were over in 2011 in the suit. The unfortunate decree holder filed E.A.No.176 of 2013 seeking for delivery of possession of the property.



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6. The argument was that the scope of the delivery of possession is beyond the decree and therefore, it could not have been granted. The trial Court rejected the argument that the decree for delivery is beyond the scope in a suit for specific performance and ordered delivery on 21.07.2014.

7. Thereafter, the two tenants M/s.Kumar Steels Pipes and Tubes and M/s.Athithya Steels claiming to be the tenants under the Judgment debtors filed applications in E.A.Nos.290 & 291 of 2014. Those applications ended in dismissal. Challenging the same, the Civil Revision Petitions were filed before this Court in C.R.P.(NPD)Nos.2942 & 3177 of 2017. The said CRPs. were dismissed as withdrawn on 27.03.2018.

8. Apart from that, the alleged tenants filed two other applications in R.E.A.Nos.428 & 429 of 2014 in R.E.A.Nos.290 & 291 of 2014. The said applications were dismissed on 21.03.2016. Challenging the same, C.R.P.(NPD)Nos.2475 & 2476 of 2016 were filed. The same were dismissed on 24.10.2016.

9. It is pertinent to point out that this Court while dismissing the CRPs. on 24.10.2016 had specifically directed the learned II Additional Subordinate Judge, Coimbatore, to dispose of the applications within a period of two months. Despite this direction, E.P. was sought to be dragged on by the judgment debtors through one mean or other.



10. Yet again by order dated 27.03.2018, time for execution was granted by further period of three months. Even thereafter, applications were not taken up.

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11. The 1st respondent herein after having lost the suit, took out fresh application in E.A.No.32 of 2018 stating as per the agreement of sale, she is entitled to the 2nd and 3rd floors of the building and therefore, the decree is in-executable. She also filed E.A.No.31 of 2018 to stay further proceedings in E.P.No.185 of 2008 in E.A.No.176 of 2013 and E.A.No.1 of 2019 in E.A.No.32 of 2018 for appointment of an Advocate Commissioner to visit the suit site. This is only yet another attempt to prevent the execution of the decree. Challenging the same, the present revisions have been filed by the decree holder.

12. The narration of the facts setforth above would show that the decree holder had been successful before the trial Court, lower Appellate Court, before this Court as well as before the Supreme Court. He is being consistently frustrated in executing the decree, which had been passed as early as 1992, that too for a period of more than three decades by one resort or the other. The Claim Petition, if unnecessarily delayed shall not be entertained under Order XXI Rule 58 Code of Civil Procedure. It is not as if the claimant did not pursue her remedy by way of presentation of the plaint in O.S.No.550 of 2011 i.e., as early as 2011. The 1st respondent was aware that the property had been sold as early as on 04.11.1987. The agreement is a registered



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agreement and for the first time, a new plea was taken by the wife stating that she had separated from her husband and entitled to 2nd and 3rd floors. Such an application to delay the decree which has been confirmed in the Supreme Court is nothing but abuse of process of law. This Court has jurisdiction to nip such an abuse in the bud by exercising the powers granted under Article 227 of the Constitution of India. I have to put an end to this vexatious litigation instituted by the wife of the judgment debtor.

13. In fine,

(i) The Civil Revision Petitions are allowed.

(ii) The learned I Additional Subordinate Judge, Coimbatore, is requested to strike off the proceedings in E.A.No.1 of 2019 in E.A.No.32 of 2018, E.A.Nos.31 and 32 of 2018 from its file and ensure that the delivery is handed over to the decree holder within a period of four weeks from the date of receipt of a copy of this order.

(iii) The learned Judge shall ensure that the decree is not delayed any further and he shall submit a report to this Court, which shall in any event, on or before 30.09.2023. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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C.R.P.(NPD)Nos.1292, 1308 & 1310



V.LAKSHMINARAYANAN,J.

Kj

To

The I Additional Subordinate Judge
Coimbatore.

C.R.P.(NPD)Nos.1292, 1308 & 1310 of 2019
and C.M.P.Nos.8435, 8548, 8585 of 2019

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