



WEB COPY



CRP No.2900 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2900 of 2016
and CMP.Nos.14715 & 14773 of 2016

Sasikala

..Petitioner

Vs.

1.B.Jayanthi

2.Andavan

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 21.4.2016 passed in E.P.No.30 of 2014 in O.S.No.15 of 2011, on the file of the Subordinate Judge, Kancheepuram.

For Petitioner : Mr.Thameem Mohideen
for Mr.T.R.Rajaraman

For Respondents

For R1 : Mr.D.N.Dhurgasha

For R2 : Not ready in notice

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 21.4.2016 passed in E.P.No.30 of 2014 in O.S.No.15 of 2011, on the



file of the Subordinate Judge, Kancheepuram, thereby ordered delivery of possession in respect of the suit schedule property.

2. The first respondent filed a suit in O.S.No.15 of 2011 as against the petitioner and the second respondent herein for declaration that she is the absolute owner of the suit property. In the said suit, both were set exparte and exparte decree was passed on 17.06.2013 and on the strength of the exparte decree, the first respondent filed an Execution Petition for delivery of possession in E.P.No.30 of 2014 and the same was ordered on 21.04.2016. Aggrieved by the same, the petitioner has filed the present civil revision petition.

3. The learned counsel for the petitioner would submit that the petitioner herein is the wife of the second respondent herein. The suit property was purchased by her husband namely the second respondent from the money which was given as Seethanam during their marriage. However, the suit property was purchased in the name of the first respondent herein. Thereafter, there was some misunderstanding between them and as such, the second respondent sold the said property to the first respondent herein. The petitioner had no knowledge about the said sale and she is in possession and enjoyment of the suit property.



Therefore, she filed a suit as against the respondents herein for permanent injunction in O.S.No.1693 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur. In the said suit, both the respondents were set exparte and exparte decree was passed on 25.11.2014. The petitioner also filed a petition to set aside the exparte decree with a petition condone the delay of 496 days in I.A.No.665 of 2014. However, it was also dismissed for default by the fair and decreetal order dated 16.12.2017.

4. At the same time, the first respondent also filed a petition to set aside the exparte decree passed in O.S.No.1693 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur, and it is pending. Therefore, the petitioner obtained decree of interim injunction in respect of the very same property in O.S.No.1693 of 2008 and it is in force.

5. On the other hand, the first respondent obtained decree of declaration and recovery of possession and damages in respect of the very same property. Now, the Execution Court ordered delivery of possession in respect of the suit property which is in possession and enjoyment of the petitioner herein. Therefore, without setting aside the exparte decree passed in O.S.No.1693 of



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2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur, the Execution Court cannot order delivery of possession. The set aside petition filed by the first respondent in O.S.No.1693 of 2008 is also pending on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

6. In view of the above, the order dated 21.4.2016 passed in E.P.No.30 of 2014 in O.S.No.15 of 2011, on the file of the Subordinate Judge, Kancheepuram, is hereby set aside.

7. Accordingly, the civil revision petition stands allowed. The first respondent is at liberty to approach the Execution Court to execute the decree passed in O.S.No.15 of 2011 on the file of the Subordinate Court, Kancheepuram, subject to the result of the suit in O.S.No.1693 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.01.2023

Speaking/Non-speaking order
Index : Yes/No
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G.K.ILANTHIRAIYAN.J,

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To

- 1.The District Munsif cum Judicial Magistrate,
Sriperumbudur.
- 2.The Subordinate Court,
Kancheepuram.

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