



C.R.P.No.1766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Civil Revision Petition.No.1766 of 2023
and C.M.P.No.11477 of 2023

1.V.Soniya Mary

2.J.Gnana Soundari

3.D.Vimala

... Petitioners

Vs.

1.R.Parthasarathy

2.S.Mary Jacqueline

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 23.02.2023 passed in E.P.No.25 of 2015 in O.S.No.148 of 2010 on the file of the Sub Court, Tiruvallur and to direct the respondent to handover the possession of the E.P.No.25 of 2015 schedule property to the petitioners.

For Petitioners : Mr.B.Gurunathan



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ORDER

This Civil Revision Petition is filed challenging the order passed in E.P.No.25 of 2015 in O.S.No.148 of 2010 dated 23.02.2023 on the file of the Sub Court, Tiruvallur alleging that the execution Court had gone beyond the scope of the decree.

2. It is submitted by the learned counsel for the petitioners that the respondents/plaintiffs have filed a suit in O.S.No.148 of 2010 seeking for specific performance of contract of sale in respect of the schedule of property and the said suit was decreed. In pursuance of the said decree, the respondents/plaintiffs have filed E.P.No.15 of 2012, thereby, the sale deed in respect of schedule of property was executed. Subsequently, the present E.P.No. 25 of 2015 was filed seeking for delivery of possession, in which the petitioners/Judgment Debtors remained exparte however, petitioners have filed an application to set aside the exparte decree along with an application in E.A.No.15 of 2017 for condonation of delay of 25 days in filing the exparte set aside petition and another application to stay the proceedings. All the petitions were dismissed by way of common order. Aggrieved by the same, the petitioner has come up before this Court by way of the present



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Civil Revision Petition.

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3. Heard both sides and perused the relevant records.

4. According to the learned counsel for the petitioners, another C.R.P.No.1504 of 2023 is filed, aggrieved by the dismissal of I.A.No.316 of 2015 which was filed for condoning the delay of 1440 days in filing application for setting aside exparte decree in O.S.No.148 of 2010 and C.R.P.No.1504 of 2023 is stated to be still pending.

5. The only contention raised by the learned counsel for the petitioners in the present Civil Revision Petition is that the Execution Court has gone beyond the scope of decree and ordered for recovery of possession as sought for by the respondents/decreed holders even though there is no decree of recovery of possession. It is settled legal position that in so far as decree in respect of specific performance of agreement of sale, the relief of recovery of possession is inherent and there is no need for seeking any specific decree for recovery of possession, thereby the Execution Court has rightly proceeded in disposing of E.P.No.25 of 2015 and ordered for recovery of possession.



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6. The Hon'ble Supreme Court in a case of ***Manickam @ Thandapani & another v. Vasanatha***, reported in ***2022 LiveLaw (SC) 395***, has held as under:-

"25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act."

7. In view of the above legal position, there is no infirmity in the orders passed by Execution Court, thereby no case is made out for interference by this Court. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2023



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Index: Yes/No

WEB CTS Speaking Order: Yes/No

To

The Sub Court,
Tiruvallur.



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Dr.D. NAGARJUN, J.
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