



C.R.P.No.3477 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on
20.02.2023

Pronounced on
03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.3477 of 2016
and C.M.P.No.17707 of 2016

1.G.Gokuldas

Represented herein by his Authorised Power of Attorney

R.Chitra Devi

2.S.Natarajan

3.T.Bakeerathan

4.S.Satheesh Naveen

5.C.Vinithra

6.S.Ilaiyaraja

7.R.Lalitha

..Petitioners

Vs.

1.C.Jayaraman

2.Devaraj

3.Thapasi Mary

4.Y.Eknath

5.Y.Sharma

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed by the learned Registrar, Small Causes in E.A.No.31 of 2015 in E.P.No.36 of 2014, dated 02.11.2016 and allow the civil revision petition with costs.



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For Petitioners : Mr.C.P.Hem Kumar
for M/s.Ganesh & Ganesh

For Respondents
For R1 : Mr.P.C.Narayanan, Senior Counsel
for Mr.P.T.Rakesh

For R2 to 5 : Not ready in notice

ORDER

The civil revision petition has been filed as against the fair and decretal order dated 02.11.2016 passed in E.A.No.31 of 2015 in E.P.No.36 of 2014 on the file of the learned Registrar, Court of Small Causes, Chennai, thereby dismissing the petition filed under Order I Rule 10(2) r/w Section 151 of CPC.

2. The petitioners are the third parties in the Execution Petition filed by the first respondent herein in E.P.No.36 of 2014. Their case is that they are the absolute owners of the property comprised in Town Survey No.43, Old Survey Field No.37 of 2020, measuring an extent of 2712 Sq. feet situated at Door No.19, Alagar Perumal Koil Street, Vadapalani, Chennai. All the petitioners purchased their undivided share out of the the extent of 2712 Sq.feet from one Guruvan Ayyavu, the predecessor in title by separate Sale Deeds. They had



acquired ownership over 50% of undivided share in the suit property by a registered Sale Deed dated 10.07.2013, vide Doc.No.1804 of 2013.

3. Similarly, another 50% of undivided share owned by one R.Indira, was sold by a registered Sale Deed dated 10.07.2013, vide Doc.No.1803 of 2013. Both the Sale Deeds were executed by one Devapradeep, through his Power Agent Mr.T.S.Rajendiran. The said Devapradeep acquired the suit property through two Sale Deeds executed by his father and mother dated 10.01.2013 and 14.03.2013, vide Doc.Nos.73 and 699 of 2013. His parents derived title over the property by a registered Sale Deed dated 27.05.1998 executed by one Y.S.R.Moorthy @ Y.Sriramamurthy.

4. The respondents after having been purchased the undivided share, have also entered into a construction agreement with M/s.Karan Constructions for constructing multiple housing units comprising six flats in the suit property. Accordingly, the petitioners were allotted their respective flats. All their flats were subjected for property tax assessment, Water Supply and Sewerage board taxes, etc. They were issued joint patta for the entire suit property and thus they are in exclusive possession and enjoyment of the suit property. Thereafter, they came to understand through a notice issued by the first respondent herein that



the suit in C.S.No.296 of 2013 was filed before this Court for an injunction restraining the defendants from putting up any construction in the suit property.

In the said suit, the petitioners vendor, namely M.Devaraj and Mrs.Thapasi Marry, and others were parties.

5. According to the first respondent, they have entered into a building contract with one Mr.T.S.Rajendran for constructing the flats and the petitioners were given oral instructions that one of the defendants is to continue with the construction. However, the petitioners have no knowledge about that defendant and they had at, no point of time, instructed him to carry out the construction in the suit property, since they have also entered into an agreement with M/s.Karan Constructions for constructing their respective flats. The entire construction was already completed and they were put up in a separate possession and enjoyment of their respective flats. Therefore, on verifying the Encumbrance Certificate in respect of the suit property, the petitioners came to understand that a Lease Deed has been executed between the vendors, namely Y.S.R.Moorthy, Chinnasamy Mudaliar and M.V.Manicka Mudaliar on 22.11.1956 and as per the said document, a vacant land ad-measuring an extent of 2565 Sq.feet comprised in Old S.No.37 of 20-A part, was let on lease in favour of Y.S.R.Murthy by Chinnasamy Mudaliar and M.V.Manicka Mudaliar.



However, the said documents do not reveal that the said Chinnasamy Mudaliar and M.V.Manicka Mudaliar are owners of the suit property and also as to how they had acquired title over the suit property. The Encumbrance Certificate also does not disclose any transaction of said conveyance in respect of the suit schedule property.

6. Further, the boundaries of the suit property and the boundaries mentioned in the lease documents differ. The first respondent herein claims title over the suit property, as if he had purchased the entire extent of property from his late father Chinnasamy Mudaliar.

7. It is also seen that the builder, namely M/s.Karan Constructions placed boards and banners in the suit property for sale of flats. Only thereafter, the petitioners approached for construction and purchased the undivided share and entered into an agreement of construction in respect of their respective flats. However, the first respondent did not even object the same and kept calm till completion of the entire construction.

8. In fact, the first respondent had also filed a suit for injunction in respect of the suit schedule property in O.S.No.6478 of 1998 before the City



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Civil Court, Chennai and the same was dismissed for default, after verifying the written statement by the petitioners' vendor. Therefore, the first respondent now again claims an title over the suit property, since his father Chinnasamy Mudaliar and another person M.V.Manickam Mudaliar had no title over the suit schedule property.

9. While that being so, the petitioner filed a suit for ejectment in respect of the suit properties in O.S.No.5 of 1999, and the same was decreed in his favour on 04.11.2013. The petitioners filed a suit for declaration and in the said suit, summons were served on the first respondent and he had entered appearance through his counsel.

10. Therefore, the petitioners were aware of the execution proceedings and when they came to understand the same, immediately they had filed a petition to implead themselves as parties to the E.P.No.36 of 2014 and it was dismissed on the ground that, after knowing the fact that their predecessors had no title over the property and they purchased the property and therefore, they have no independent right to property to resist, obstruct or object the execution of a decree. Resistance at the instance of transferee of judgment-debtor during the pendency of the proceedings, cannot be said to be resistance or obstruction



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by a person on his own right and therefore, he is not entitled to get his claim adjudicated on the said proceedings. Hence, the Court below dismissed the petition seeking impleadment in the execution proceedings.

11. The petitioners purchased their respective undivided share in the year 2013 and thereafter, they entered into a construction agreement with M/s.Karan Constructions. Thereafter, the entire construction had been completed and the petitioners are put in possession of their respective flats and they are in possession and enjoyment of the share in their respective flats. Their flats are also assessed with property tax and other amenities. Now, the first respondent filed a execution petition to execute the decree of ejectment as against the predecessors-in-title over the suit property. Therefore, the petitioners are absolutely unaware and hence they are proper parties in order to decide the execution petition.

12. In view of the above, the civil revision petition shall stand allowed and the order dated 02.11.2016 passed in E.A.No.31 of 2015 in E.P.No.36 of 2014 on the file of the Registrar, Court of Small Causes, Chennai, is hereby set aside. The Execution Court is directed to give sufficient opportunity to the petitioner and dispose of the Execution Petition on merits and in accordance



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with law, within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.03.2023

Speaking/Non-speaking order

Index : Yes/No

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To

1.The Registrar, Court of Small Causes, Chennai



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G.K.ILANTHIRAIYAN.J.

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Pre-delivery order made in
C.R.P.No.3477 of 2016

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