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C.R.P.No. 1742 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No. 1742 of 2023

A. Rajamani

.. Petitioner

Versus

M. Kaja Nijamudeen (deceased)

1.Nazeeth Banu
2.Nazneen Sulthana
3.Imthiyas
4.Syedali Fathima

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the final order and decretal order dated 05.01.2023 passed in C.F.R.No.1487 of 2021 in O.S.No.806 of 2007 by the learned V Additional District Court, Coimbatore.

For Petitioner : Mr. B. Thirumalai
For Respondents : Mr. D. Palaniswamy

ORDER

This Civil Revision Petition is filed challenging the order dated 05.01.2023 passed in C.F.R. No. 1487 of 2021 in O.S. No. 806 of 2007 on the file of the learned V Additional District Court, Coimbatore.



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2. When this Civil Revision Petition is taken up for hearing today, the learned counsel for both sides submitted that the dispute has been settled among the parties. To this effect, the petitioner as well as the respondents have filed separate affidavits dated 21.09.2023. The relevant portion of the affidavit dated 21.09.2023 of the petitioner/plaintiff reads as follows:-

“5. I humbly submit that I do understand and accept that the Appellate decree and judgment is binding on me and there is finality in the above matter. In the meantime, one Mr.K.Raja Nijamudeen, the respondent/deceased sole defendant herein had expired and is survived by his legal heirs i.e 1 to 4 respondents/legal heirs of the deceased sole defendant. It is also stated that I have filed an interim application vide C.F.R.No.1487 of 2021 in O.S.No.806 of 2007 before the learned V Additional District Judge, Coimbatore praying to return the deposit amount of Rs.6,00,000(Rupees Six Lakhs) deposit on the account of O.S.No.806 of 2007 dated 05.08.2009 whereas the respondents 1 to 4 herein also gave no objection by way of filing the MEMO to withdraw the sum of Rs.6,00,000/- (Rupees Six Lakhs) that was deposited by me before the learned V Additional District Judge, Coimbatore in pursuance to its judgment and decree dated 20.07.2009. But the learned V Additional District Judge, Coimbatore has dismissed the aforesaid C.F.R.No.1487 of 2021 in O.S.No.806 of 2007 by its order dated 05.01.2023.



6. *I humbly submit that aggrieved by the above order, I preferred the present revision vide C.F.R.No.1487 of 2021 against the order in C.F.R.No.1487 of 2021 in O.S.No.806 of 2007 dated 05.01.2023. In the said revision petition, this Hon'ble High Court has directed me to file the present affidavit declaring that I will forgo my right to seek execution of the sale deed. In compliance with the same, I am filing this affidavit.*

7. *I hereby declare and state that I voluntarily forgo my right to seek execution of the sale deed for the suit property based on the decree and judgment dated 20.07.2009 passed by then learned V Additional District and Sessions Judge(FTC-III), Coimbatore.*

I, therefore humbly prayed that this Hon'ble Court may be pleased to take this affidavit on record and to set aside the final and decretal order dated 05.01.2023 passed in C.F.R.No.1487 of 2021 in O.S.No.806 of 2007 by the learned V Additional District Judge, Coimbatore and direct the learned Court to allow the send for petition C.F.R.No.1487 of 2021 to return the amount of Rs.6,00,000/- along with accrued interest.”

3. The relevant portion of the affidavit filed by the respondents on 21.09.2023 is as follows:-

“3. We humbly submit that the deceased sole

defendant herein has preferred an appeal vide A.S.No.863



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of 2009 before this Hon'ble High Court challenging the order in O.S.No.806 of 2007. The said appeal was dismissed by this Hon'ble High Court vide its order dated 21.02.2017 subject to the condition that the petitioner herein should pay the appellant (i.e., the deceased sole defendant/respondent herein) a further sum of Rs.4,00,000/- (Rupees Four Lakhs only) as additional consideration (apart from initially fixed sale price of Rs.6,35,000/- within a period of 8 weeks from the date of receipt of the copy of the order. Accordingly, the petitioner herein ought to have paid the additional consideration of Rs.4,00,000/- on or before 17.05.2017. But the petitioner herein failed to do so. Thereby he lost his right to take sale of the suit property. Meanwhile Mr.Kaja Nijamudeen, the sole defendant was died on 20.01.2017 leaving behind his legal heirs (i.e., 1 to 4 respondents/Respondents).

4. We humbly state that the petitioner herein sought for refund of the deposited sale price of Rs.6,00,000/- paid by him, hence he filed the suit for petition vide C.F.R.No.1487/2021 in O.S.No.806 of 2007 before learned V Additional District Judge, Coimbatore. It is also stated that we have also impleaded as Respondents 2 to 5 in which we have also filed a MEMO giving no objection for return of the sale price of Rs.6,00,000/- that was deposited by petitioner herein before learned V Additional District Judge, Coimbatore. The said petition was dismissed by the learned V Additional District Judge, Coimbatore vide its



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order dated 05.01.2023. So the petitioner herein filed this preset revision petition vide C.R.P.No.1742 of 2023 against the order dated 05.01.2023 in C.F.R.No.1487 of 2021.

5. We humbly submit that in this said revision petition this Hon'ble High Court has directed us to file the present affidavit for giving no objection for return of the sale price of Rs.6,00,000/- (Rupees Six Lakhs) that was deposited by petitioner herein on the account of O.S.No.806 of 2007 paid on 05.08.2009.

6. We hereby declare that in compliance with the same, we are filing this affidavit and state that we have no objections whatsoever for return of the sale price of Rs.6,00,000/- that was deposited by petitioner herein in O.S.No.806 of 2007 on 05.08.2009.

We, therefore pray that this Hon'ble Court may be pleased to take this affidavit on record and direct the learned V Additional District Judge, coimbatore to allow the send for petition C.F.R.No.1487 of 2021 for the amount of Rs.6,00,000/-to the petitioner herein.”

4. The affidavits dated 21.09.2023 of the revision petitioner/plaintiff as well as the respondents are recorded. In the light of the affidavits dated 21.09.2023 of the parties, the trial court shall permit the revision petitioner/plaintiff to withdraw the sum of Rs.6,00,000/- lying to the credit of the suit in O.S. No. 806 of 2007.



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5. Accordingly, the Civil Revision Petition is disposed of. No costs.

The affidavits dated 21.09.2023 of the petitioner as well as the affidavit dated 21.09.2023 of the respondents shall form part of this order.

17.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The V Additional District Court, Coimbatore.



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T.V.THAMILSELVI, J.

AT

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