



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

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

C.R.P. No.3159 of 2013

and

M.P.No.1 of 2013

Annamalai

....

Petitioner

Vs

1. Vijaya

2. Balu

....

Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the injunction order dated 06.10.2012 made in E.A.No.214 of 2008 in E.P.No.105 of 2007 on the file of the District Munsif Court, Chengam.

For Petitioner : Mr.P.R.Balasubramanian

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed as against the injunction order dated 06.10.2012 made in E.A.No.214 of 2008 in E.P.No.105 of 2007 on the file of the District Munsif Court, Chengam.



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2. The first respondent filed a petition in O.P.No.19 of 1991 on the file of the Subordinate Judge, Tiruvannamalai, as against the second respondent for maintenance of a sum of Rs.400/- and creating a charge over the “A” Schedule property in view of the realisation of maintenance. The suit property comprised in S.No.13/2 admeasuring 1.08 cents situated at Nayambadi Village, Chengam Taluk, Tiruvannamalai District, out of the said land, 0.60 cents with well and pump set, the dry land comprised in S.No.13/3 admeasuring 1 acre 79 cents out of these 1 acre; S.No.13/4 admeasuring 1.46 cents, out of these 82 cents; S.No.13/6B admeasuring 15 cents, out of these 8 cents. The suit was filed to cheat the third parties and it was collusive one. In fact, they are living together happily. The suit was re-numbered as O.S.No.4 of 1992 on the file of the Subordinate Court, Tiruvannamalai, which ordered maintenance of Rs.200/- per month and created a charge over the “A” Schedule property.

3. In pursuant to the decree, the first respondent filed an Execution Petition as against the second respondent and the same was dismissed for default. Again she filed another Execution Petition for creating a charge over the “A” Schedule property. In fact from the year 1992 to 2007, both



the respondents jointly and executed several sale deed and mortgaged the properties to various persons and created joint encumbrance. Both the respondents jointly entered into a sale agreement in the year 2006 and thereafter, the sale deed was executed by the 2nd respondent in favour of the petitioner. Thereafter, the petitioner was in possession and enjoyment of the suit schedule property. The first respondent filed another execution petition in E.P.No.105 of 2007 on the file of the District Munsif Court, Chengam, i.e., after lapse of 12 years from the date of decree on 06.03.1992.

4. Therefore, the petitioner filed an Interlocutory Application and resisted the execution petition contended that from the date of purchase of the suit schedule property, the petitioner is in possession and enjoyment of the same. In pursuant to the said purchase, the revenue documents were also mutated in the name of the petitioner and the Adangal extract was also issued in his name. In fact, the petitioner also discharged the mortgage, which was incurred by the respondents on 07.08.2008. Without considering the above facts and circumstances, the Execution Court ordered for delivery and dismissed the E.A.No.214 of 2008. The petitioner being bonafide purchaser of the suit schedule property in respect of the very same property,



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the order passed by the execution Court cannot be sustained and it is liable to be set aside.

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5. In view of the above, the injunction order dated 06.10.2012 made in E.A.No.214 of 2008 in E.P.No.105 of 2007 on the file of the District Munsif Court, Chengam is hereby set aside and E.P.No.105 of 2007 is dismissed. Accordingly, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The District Munsif,
Chengam.



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G.K.ILANTHIRAIYAN,J.

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