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CRP.No.3667 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3667 of 2014 and
MP.No.1 of 2014

D.Gomathi

... Petitioner

Vs.

1.Gurrammal

2.U.C.Ethiraj

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC to set aside the fair and decretal order passed in EA.No.287 of 2011 in EP.No.279 of 2008 in OS.No.934 of 2004 dated 02.08.2014 passed by the learned Additional District Munsif at Vellore and to allow this civil revision petition.

For Petitioner : Mr.G.Ilamurugu

For Respondents : No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decretal order passed in EA.No.287 of 2011 in EP.No.279 of 2008 in OS.No.934 of 2004 dated 02.08.2014 passed by the learned Additional District Munsif at Vellore thereby dismissed the petition filed under Section 47 of CPC.



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2. The petitioner is the second defendant in the suit filed by the first respondent. The second respondent is the first defendant in the said suit. The first respondent filed suit for recovery of money as against the second respondent and the petitioner herein. In the said suit, the second respondent remained exparte and decree was passed as against the second respondent herein. As against the judgment and decree passed by the trial court, there was no appeal filed by the second respondent herein. On the strength of the said decree, the first respondent filed execution petition in EP.No.279 of 2008. While pending the execution petition, the petitioner filed petition to implead herself as a party. However, it was dismissed. Therefore, the petitioner filed petition under Section 47 of CPC to dismiss the execution petition on the ground that she entered into an agreement for sale with the second respondent in respect of the suit schedule property. On the strength of the agreement for sale, she filed suit in OS.No.62 of 2004 on the file of the Sub Court, Vellore. The said suit was decreed and directed the second respondent to execute the sale deed in respect of the suit schedule property in favour of the petitioner herein. Therefore, the decree granted in favour of the first respondent thereby created charge over the property becomes null and void.



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The present execution petition has been filed based on that the second respondent herein is liable to pay execution amount by way of sale of the suit schedule property. After decree obtained in OS.No.62 of 2004 on the file of the Sub Court Vellore, the second respondent has no right over the property and no charge can be created over the said property. However, the court below dismissed the petition on the ground that already the petitioner filed petition to implead herself as party in the execution petition and the same was dismissed on merits, as against which the petitioner did not prefer any appeal so far. The decree was granted in respect of the suit schedule property as against the second respondent and charge was created regarding the suit schedule property. That apart, the first respondent also paid some amount in pursuant to the decree passed against him. Now the petitioner also is taking steps to execute the specific performance decree as against the second respondent. Therefore, the execution petition filed in order to bring the suit schedule property for auction sale to realise the decree amount cannot be possible since already the petitioner filed suit for specific performance and obtained decree as against the same property.



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4. In view of the above, the fair and decretal order passed in EA.No.287 of 2011 in EP.No.279 of 2008 in OS.No.934 of 2004 dated 02.08.2014 passed by the learned Additional District Munsif at Vellore is set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The learned Additional District Munsif at Vellore

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