



C.R.P.No.3177 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

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

C.R.P.No.3177 of 2019

R.Karthikeyan
represented by his Power of Attorney
B.Ragothaman ... Petitioner

Vs

1. N.Oveyam Ranjan
2. C.Arasu ... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 06.07.2019 passed by the III Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.M.A.No.14 of 2014, thereby confirming the fair and decreetal order dated 02.04.2014 passed in I.A.No.683 of 2010 in O.S.No.151 of 2010 on the file of the Sub Ordinate Judge, Poonamallee.

For Petitioner	:	Mr.M.Kempuraj
For R1	:	Mr.U.Venkatesan for Mr.M.Gnanasekar
For R2	:	Mr.M.Stalin



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 06.07.2019 passed by the III Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.M.A.No.14 of 2014, thereby confirming the fair and decreetal order dated 02.04.2014 passed in I.A.No.683 of 2010 in O.S.No.151 of 2010 on the file of the Sub Ordinate Judge, Poonamallee, thereby dismissing the petition seeking injunction restraining the second respondent herein from executing the decree passed in O.S.No.113 of 2004 dated 12.04.2010 on the file of the Sub Court, Poonamallee.

2. The petitioner is the plaintiff in O.S.No.151 of 2010 for declaration declaring that the exparte decree dated 12.04.2010 passed in O.S.No.113 of 2004 on the file of the Sub Court, Poonamallee as vitiated by fraud and collusion. The petitioner also prayed for a permanent injunction restraining the second respondent herein from executing the exparte decree in O.S.No.113 of 2004. Pending suit, the petitioner filed an application for temporary injunction and the same was dismissed. Aggrieved by the same, the



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petitioner also preferred an appeal in C.M.A.No.14 of 2014 and the same was also dismissed. Hence, this revision.

3. The learned counsel for the petitioner would submit that the petitioner filed a suit challenging the exparte decree passed in O.S.No.113 of 2004 dated 12.04.2010. If the said decree is executed, the main suit itself would become infructuous. Therefore, an interim injunction is very much required restraining the second respondent herein not to execute the same.

4. Heard both sides.

5. A perusal of records revealed that the first respondent herein entered into an agreement for sale with the second respondent on 30.05.2001 and agreed to sell the subject property in favour of the second respondent. The subject property was originally allotted in favour of the first respondent by the Tamil Nadu Housing Board and he was issued allotment order and also executed lease cum sale agreement in favour of the first respondent. On the



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strength of the said allotment order and lease cum sale agreement, the first respondent entered into an agreement for sale with the second respondent, even before execution of any sale deed in his favour. However, the first respondent disturbed the peaceful possession and enjoyment of the said property and as such the second respondent was constrained to file a suit in O.S.No.65 of 2004 on the file of the District Munsif Court, Ambattur.

6. Pending suit, the Tamil Nadu Housing Board executed a sale deed in favour of the first respondent in respect of the suit property. On the strength of the said sale deed, the first respondent executed a Power of Attorney in favour of one M.Nithyanandam on 01.03.2006. In turn, the said Power of Attorney executed a sale deed on the same day in respect of the suit property in favour of the petitioner herein. In the meanwhile, after execution of sale deed in favour of the first respondent by the Tamil Nadu Housing Board, the second respondent withdrew the suit filed by him in O.S.No.65 of 2004, for permanent injunction with liberty to file a suit for specific performance in respect of the suit property. Accordingly, he had withdrawn



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the suit in O.S.No.65 of 2004 and filed a suit in O.S.No.113 of 2004 on the file of the Sub Court, Poonamallee for specific performance. On receipt of the summons in the said suit, the first respondent failed to contest after filing written statement before the Trial Court and as such he was set exparte. Thereafter, the said suit was decreed by the Judgment and decree dated 12.04.2010 in O.S.No.113 of 2004 on the file of the Sub Court, Poonamallee.

7. Even on the date of the agreement for sale, i.e, 30.05.2001, the second respondent was in possession of the suit property. On the strength of the sale deed, the petitioner herein filed a present suit for declaration declaring that the decree passed in O.S.No.113 of 2004 dated 12.04.2010 as vitiated. The petitioner also sought for permanent injunction restraining the second respondent from executing the decree passed in O.S.No.113 of 2004 on the file of the Sub Court, Poonamallee. In fact, after filing the written statement by the first respondent, he had executed a Power of Attorney in favour of the said M.Nithayanandam on 01.03.2006. In turn, the Power of Attorney executed a sale deed in favour of the petitioner herein.



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8. It is seen that the petitioner purchased the property without even verifying the possession of the property and without taking physical possession of the property. It shows that the first respondent herein and the petitioner colluded with each other and wantonly encumbered the suit property by execution of Power of Attorney and Sale deed dated 01.03.2006. Though, the petitioner purchased the suit property on 01.03.2006, he had filed the present suit only in the year 2010 that too on receipt of the notice from the second respondent that an execution petition has been filed in E.P.No.62 of 2010 on the file of the Sub Court, Poonamallee. During his pendency, the petitioner purchased the suit property. However, the sale deed stands in the name of the petitioner herein in respect of the suit property and as such the second respondent is not in a position to register the sale deed in his favour till the disposal of the suit.

9. The learned counsel for the petitioner would submit that the petitioner had also filed a suit for permanent injunction in O.S.No.152 of



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2010 on the file of the District Munsif Court, Ambattur. Therefore, it would be appropriate to direct the Trial Court to conduct a joint Trial in both the suits and dispose of the suits in O.S.No.151 and 152 of 2010, within a period of three months from the date of receipt of a copy of this order and after disposal of the suit, the Trial Court is directed to proceed with the execution petition in E.P.No.62 of 2010 filed by the second respondent to execute the decree passed in O.S.113 of 2004.

10. It is made clear that the Trial Court shall dispose of the suits, in the light of the above observations made by this Court and dispose of the execution petition in E.P.No.62 of 2010, within a period of two months thereafter. Further, it is made clear that the second respondent's possession and enjoyment of the suit property cannot be disturbed at any cost by any parties till the disposal of the suits.

11. With the above directions, this Civil Revision Petition stands disposed of. No costs.



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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

1. The III Additional District and Sessions Judge, Tiruvallur, Poonamallee.
2. The Sub Ordinate Judge, Poonamallee.
3. The District Munsif Court, Ambattur.

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