



CRP No.2931 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.2931 of 2023 &
C.M.P.No.18125 of 2023**

R.Kamalanathan

... Petitioner

Vs.

1. K.Murugesan

2. M.Nirmala

... Respondents

Civil Revision Petition filed under Section 115 of Code of Civil

Procedure to set aside the order dated 27.06.2023 made in E.P.No.46 of 2017 in O.S.No.381 of 2005 on the file of the learned II Additional District and Sessions Judge, Tiruppur by allowing the present Revision.

For Petitioner : Mr.M.Guruprasad

ORDER

The present Civil Revision Petition has been filed to set aside the order dated 27.06.2023 made in E.P.No.46 of 2017 in O.S.No.381 of 2005 on the file of the learned II Additional District and Sessions Judge, Tiruppur by allowing the present Revision.

2. The brief facts of the case is as follows:-

The petitioner is the defendant and the respondents are the plaintiffs in O.S.No.381 of 2005. The said suit has been filed to direct the petitioner to execute the sale deed in respect of the suit property on the basis of the



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sale agreement dated 20.08.2003 in favour of the respondents / plaintiffs at their costs by receiving the balance of sale price of Rs.5,00,000/- and to direct the petitioner / defendant to pay a sum of Rs.13,73,000/- . The said suit was decreed as prayed for on 26.06.2006. The respondents / plaintiffs have filed E.P.No.46 of 2017 for execution of the said decree and the said petition was allowed, whereby the respondents by an order dated 27.06.2023 were held entitled for delivery of EP schedule property. As against the same, the present Revision has been filed.

3. The learned counsel for the petitioner would submit that the court below had failed to understand that the suit was not decreed after full fledged contest by the parties thereto, however, the court below had only passed an exparte decree in favour of the respondents herein without any documents to substantiate that contentions of the respondents herein or examination of any witnesses. In the present case, no such proper examination of sale agreement dated 20.08.2003 was even made by the trial court, which has caused great prejudice to the petitioner.

4. The learned counsel for the petitioner also submit that the petitioner failed to file written statement due to poor health condition, which led to passing of an exparte decree dated 26.06.2006 by the trial court, only after receving summons in the E.P. Proceedings, the petitioner came



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to know about the exparte order and taken steps to set aside the same, however, the same has been ended in vain.

5. Lastly, the learned counsel for the petitioner also submits that since fraud and collusion vitiates the alleged agreement and the alleged decree and as such, any decree obtained by fraud and collusion is void, nullity and as such, the petitioner filed a suit in O.S.No.18 of 2015 seeking for the reliefs to declare that the decree in O.S.No.381 of 2005 as null and void and set aside or cancel the said decree and the same was dismissed by Judgment and decree dated 27.04.2023 on the ground that the issue is barred by limitation. Further, no proper reasoning has been given by the executing court cannot be countenanced in the eye of law, thereby pleaded to allow the present Revision.

6. Heard the learned counsel for the petitioner and perused the documents available on record.

7. Originally the suit was filed in the year 2005 in O.S.No.381 of 2005 seeking the prayer mentioned supra. The petitioner has resisted the same by filing written statement stating that there is no interest to sell the property and the entire sale agreement is only a forged document and it was only issued for a collateral purpose. One of the witnesses to the



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alleged sale agreement is one Periasamy and the said Periasamy is closely related to the petitioner. The said Periasamy was working in a knitting unit, viz., Enrich International at Tiruppur whose proprietor was one Janarthanam. The said Janarthanam had business dealing with M/s Tharanidhara Spinning Mills at Salem for the supply of yarn on credit. The said mills insisted security by way of immovable property from the said Janartham. As agreed, the petitioner handed over the original partition deed dated 09.04.2002 and the release deed dated 31.12.1991 referred to in the plaint to the said Tharanidhara Spg. Mills and blank signed stamp papers and plain papers signed by the petitioner and three witnesses. The trial court after considering all the averments decreed the suit on 26.06.2006 by directing the petitioner to execute the sale deed in receiving the balance of sale price of Rs.5,00,000/- on the basis of the sale agreement dated 20.08.2003 in respect of the suit property mentioned hereunder and that the respondents were granted one month time from the said date to deposit the balance sale consideration.

8. Further, the petitioner filed a suit in O.S.No.18 of 2015 to declare that the decree in O.S.No.381 of 2005 passed by the learned Principal District Judge, Coimbatore as null and void and set aside or cancel the decree in O.S.No.381 of 2005 and to grant permanent injunction. The said



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suit was also dismissed on merits stating that the petitioner is not entitled to the reliefs sought for. Based on the decree obtained in O.S.No.381 of 2005, the respondents filed Execution Petition in the year 2007, E.P.No.55 of 2007 before the learned Principal District Court, Coimbatore for execution of sale deed and the sale deed was also executed on 15.04.2008. The respondents have also filed E.A.No.159 of 2008 for delivery of the suit properties for symbolic delivery of possession. The other properties were delivered except the petition schedule property in E.P., The court below, in E.P.No.46 of 2017 held that the respondents are entitled for delivery of EP's schedule property.

9. Considering the fact that initially the suit filed by the respondents in O.S.No.381 of 2005, for relief of specific performance of contract based on the sale agreement dated 20.08.2003 was decreed exparte on 26.06.2006 and the respondents filed E.P.No.55 of 2007 for execution of sale deed coupled with the fact that the petitioner filed I.A.No.446 of 2008 in O.S.No.381 of 2005 for condoning delay of 509 days in filing the petition to set aside exparte decree was dismissed on 08.07.2009, as against the same, the petitioner also preferred CRP No.2206 of 2009 and the same was also dismissed on 16.04.2010 and SLP No.11950 of 2010, which was preferred by the petitioner as against the order in the said CRP before the Hon'ble Supreme Court was dismissed on 16.08.2010 and taking note of



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the fact that O.S.No.18 of 2015 preferred by the petitioner to declare the decree in O.S.No.381 of 2005 as null and void and other consequential reliefs were dismissed on 27.04.2023, further, as against the said order, the petitioner has filed Appeal Suit No.478 of 2023 before this Court and the same is pending for adjudication and that Stay has not been granted as of now and keeping in mind the Judgment of the Hon'ble Supreme Court in **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., reported in (2005) 1 SCC 705, wherein it is held that** *filing of appeal is not a stay of decree or order or the appeal is not automatic stay of decree or order. Unless a stay application praying for stay on the execution of the decree or order is filed and a stay of decree or order to that effect is granted by the Appellate Court, mere filing of appeal does not operate as a stay,* therefore, this Court is of the view that the petitioner has not made out any grounds to interfere with the order passed by the court below in E.P.No.46 of 2017 dated 27.06.2023 and the Revision is liable to be dismissed.

In the result, the present Revision is dismissed. However, only on the basis of the decree dated 26.06.2006, the respondents are entitled for executing the decree. Consequently, connected miscellaneous petition is closed. No costs.

22.08.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

ssd

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V.BHAVANI SUBBAROYAN J.

ssd

To

The II Additional District and Sessions Judge,

Tiruppur

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