



C.R.P.(NPD)No.3502 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.3502 of 2019
and CMP.No.22978 of 2019

Madhavan

... Petitioner

Vs.

1.K.Palaniappan
2.Muthukumar
3.Paranjothi
4.Vijaya Lalitha

5.The Sub Registrar of Land Registration,
Kurinjipadi

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Fair and Decreetal order of the learned Principal District Judge, Cuddalore dated 15.06.2019 passed in C.M.A. No.27 of 2018 confirming the Fair and Decreetal order of the learned I Additional Subordinate Judge, Cuddalore dated 05.04.2018 passed in E.A.No.194 of 2013 in E.P.No.217 of 2012 in O.S.No.220 of 1987.

For Petitioner : Mr.J.Antony Jesus



C.R.P.(NPD)No.3502 of 2019

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ORDER

O.S.No.220 of 1987 was a suit for specific performance of an agreement of sale. The said suit was originally dismissed in 1989. An appeal in A.S.No.137 of 1989 was allowed and the suit was decreed on 05.01.1990. Against which, a second appeal was preferred to this Court in S.A.No.1794 of 1990. The Second Appeal was dismissed on 03.01.2003 as abated.

2.Pursuant to the dismissal of the appeal in E.P.No.217 of 2012 was presented. The sale deed was executed by the Court in pursuance of the decree. In the said execution petition, an application under Section 47 of the CPC was filed by the legal heirs of the judgment debtor. The Section 47 application was dismissed. Against which, an appeal had been preferred and the same was also dismissed. Seemingly aggrieved by the same, the present revision has been filed.

3.At the outset, I am rather surprised that an appeal was entertained as against an order passed under Section 47. After the amendment to Section 47 by Act 104 of 1976, an order under Section 47 is not a decree



C.R.P.(NPD)No.3502 of 2019

WEB COPY

and therefore, it is not susceptible to an appeal. Nonetheless, considering the fact that the suit has been pending for more than 40 years, I am hearing the matter on the merits of the Section 47 application.

4. I heard Mr.J.Antony Jesus. I have gone through the papers.

5.Mr.J.Antony Jesus would submit that the Court ought not to have executed the sale deed because the value of the property as given in the sale deed is only Rs.2 lakhs, when the market value is about Rs.20 lakhs. He would urge that the E.P. had been filed after the dismissal of the Second Appeal and 19 years from the date of the First Appeal decree and therefore, it is barred by limitation. He would therefore urge that the revision be allowed and the Execution ordered by the Court be set aside.

6.Insofar as the first argument is concerned, the judgment debtor seems to be reeling under the impression that the sale deed had been executed after a Court auction sale. It is only in such cases, does the question of valuation assume relevancy. From the facts set forth above, it is clear that this is not a sale executed by the Court pursuant to a money decree for the Court to decide on the valuation.



C.R.P.(NPD)No.3502 of 2019

WEB COPY

7.O.S.No.220 of 1987 was a suit for specific performance where the parties have already agreed to the value and if the decree holder show to the satisfaction of the Court that he had complied with the terms of the decree, it is the duty of the Executing Court to execute the sale deed. The fact that the value of the property agreed upon between the judgment debtor and decree holder is low cannot be laid at the door steps of the Court. Therefore, the first submission fails.

8.Insofar as the second submission is concerned, the execution petition is barred by time, this also need not detain us for long. Originally E.P.No.72 of 2009 was presented for execution of the sale deed and E.P.No.217 of 2012 was filed for delivery of possession. The Court need not have adopted a two step method for the purpose of execution of a decree for specific performance. It is now settled by the Supreme Court that the right to take possession of the property through process of Court, is inherent in a decree for specific performance.

9.In fact, a mere application for delivery would suffice in the E.P.No.72 of 2009. E.P.No.72 of 2009 having been filed in time, that is,



C.R.P.(NPD)No.3502 of 2019

within 5 years of the dismissal of the Second Appeal, no exception can be taken for the Court having executed the sale deed as per the decree that was in favour of the decree holder. E.P.No.217 of 2012 is only a consequential relief and that too it has been filed within a period of 12 years from the date of dismissal of the second appeal.

10.Both the grounds having failed, nothing further remains than to dismiss the revision as it has no merits. Consequently, this civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

17.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
rjr/vs

To

- 1.The Principal District Judge,
Cuddalore.
- 2.The I Additional Subordinate Judge,
Cuddalore.

5/6



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C.R.P.(NPD)No.3502 of 2019

V.LAKSHMINARAYANAN,J.

VS

**C.R.P.(NPD)No.3502 of 2019
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