



C.R.P.No.3188 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3188 of 2019
and CMP.No.20768 of 2019

1.J.Sudha
2.R.Suguna

... Petitioners /
Judgment Debtors 2 & 3

Vs

C.K.Selvasekaran

.. Respondent / Decree Holder

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 28.09.2018 made in E.A.No.137 of 2017 in E.P.No.16 of 2008 on the file of Principal District Court at Chengalpattu.

For Petitioners : Mr.V.Karnan

For Respondents : Mr.T.S.Baskaran

ORDER

This revision arises out of an order challenging E.A.No.137 of 2017 in E.P.No.16 of 2008 dismissing the defendants/judgment debtors' application



for setting aside the *exparte* order passed against them in the said E.P.

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2. The backdrop facts leading to this revision may now be stated :

- The suit in O.S.No.243 of 2006 was laid for specific enforcement of a sale agreement, and this was decreed *exparte* on 11.04.2007. Subsequently, the decree holder (D.H) laid E.P.No.16/2008 for executing the said *exparte* decree. The notice was served on the judgment debtors (JDs), but they did not appear. Thereafter, as required by the Execution Court, the decree holder applied for the Encumbrance Certificate pertaining to the property and found that the property in question was sold subsequent to the decree, by an alleged Power of Attorney of the JDs to some third parties.
- This prompted the decree holder to institute a suit in O.S.No.521/2009 to declare that the sale deed executed on behalf of JDs by their alleged Power of Attorney to the third parties as null and void.
- In that suit, the present JDs had disputed the sale agreement in favour of the decree holder, but still admitted the passing of the preliminary decree on 11.04.2007. Ultimately after due trial, on 26.04.2018, the



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suit was decreed and no further appeal was preferred.

- Thereafter, after the disposal of O.S.No.521/2009, the JDs have taken out two applications, one for setting aside the exparte decree in O.S.No.243/2008 along with an application to condone the delay in filing the same. The latter mentioned application is I.A.No.21/2008. After due enquiry, the trial Court dismissed this application and the same came to be confirmed by this Court in CRP.No.3582/2018, and this has become final.
- The other application taken out by JDs is the one involved in this revision in E.A.No.137/2017. This is filed for setting aside the order of the Execution Court setting the JDs' exparte in E.P.No.16/2018. This was dismissed by the Execution Court and it is now under challenge.

3. The learned counsel appearing for the revision petitioners/JDs submitted that :

- (a) There are two Power of Attorney documents alleged to have been executed by JDs, but both are forged and fabricated. One such Power of Attorney holder, the first of the two, had executed a sale agreement



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in favour of the decree holder / respondent, on the strength of which he had obtained the exparte decree. The other Power of Attorney is the one which is the subject matter in O.S.No.521/2009.

(b) So far as the revision petitioners are concerned, whenever they receive the Court notices, they used to entrust the same with the first defendant's husband, and they were under a bonafide impression that the suits have been prosecuted diligently. It is the negligence of the husband of the first defendant that has cost them the right in the suit.

4. If the statement made by the learned counsel for the revision petitioner were to be accepted, it can only evoke sympathy, but nothing beyond that. Here is a situation where the Court has passed a decree, and the attempt of the present revision petitioners to have the delay condoned in filing an application under Order IX Rule 13, has been dismissed, and has been confirmed by this Court in CRP.No.3582/2018 and has since become final. In a scenario such as this to entertain the plea such as this in an execution petition, would only imply that this Court might have to go behind the decree that was passed, which is impermissible in procedure.



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5. The learned counsel for the revision petitioner now produced another document dated 14.09.2020. This is the proceedings of the District Registrar, by which he had cancelled the Power of Attorney document under which the decree holder had obtained the sale agreement. The proceedings no way shows that notice had gone to the decree holder, and the District Registrar was approached by the revision petitioners only on 25.04.2019. This Court does not want to take notice of this proceedings when the decree holder was not even heard in the matter.

6. In fine, this Court does not find any merit and the revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

Index : Yes / No
Speaking Order / Non-speaking Order
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To:

1.The Principal District Judge
Chengalpattu.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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