



C.R.P.Nos.3193 & 3194 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2023

Pronounced on : 09.05.2023

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P. Nos.3193 & 3194 of 2019
and CMP.Nos.20792 & 20915 of 2019

CRP.No.3193 of 2019:

Dhanabakiyam

... Petitioner/ 2nd respondent /
Third Party
Vs.

1.S.Natarajan

2.K.M.Selvamani

... Respondents 1, 2 /Respondents 1, 3 /
Plaintiff, Defendant

3.S.Raju, Proprietor

Bannari Amman Engineering Works
Door No.14, Sathy Road, Periyathottam
Konnamadai, Nambiyar Post
Gopi Taluk, Erode District.

... 3rd Respondent / 3rd respondent /
Third Party

CRP.No.3194 of 2019:

Dhanabakiyam

... Petitioner/ Petitioner /3rd Party

Vs.

1.S.Natarajan

2.K.M.Selvamani

... Respondents /Respondents 1&2 /
Plaintiff, Defendant

Prayer in CRP.No.3193 of 2019: Civil Revision Petition filed under Section 115 of CPC., praying to set aside the fair and final order dated 19.07.2019 made in E.A.No.68 of 2016 in E.P.No.14 of 2010 in O.S.No.146 of 2002, on the file of Sub Court, Gobichettipalayam, Erode District.



C.R.P.Nos.3193 & 3194 of 2019

Prayer in CRP.No.3194 of 2019 : Civil Revision Petition filed under Section 115 of CPC., praying to set aside the fair and final order dated 19.07.2019 made in E.A.No.169 of 2017 in E.P.No.14 of 2010 in O.S.No.146 of 2002, on the file of Sub Court, Gobichettipalayam, Erode District.

For Petitioner : M/s.Camyles Gandhi
(in both CRPs)

For Respondents : Mr.Vijaya Baskar
(in both CRPs)

COMMON ORDER

These two revisions arise from two separate orders passed by the Execution Court in E.A.No.68/2016 and E.A.No.169 of 2017 in R.E.P.No.14 of 2010.

The facts are as follows :

- A certain Natarajan as plaintiff has laid O.S.No.146/2002 for specific performance of a sale agreement dated 06.12.2000 executed by one Selvamani, the defendant. The agreement deals with several items of immovable properties, of which the Court is now concerned with 0.16.0 hectares (approximately 40 cents) of property in Sy.No.442/3 in Nambiyur Village.
- Selvamani, the defendant did not contest the suit and consequently on 10.10.2007, an exparte decree came to be passed.



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- Thereafter, Natarajan, the decree holder had laid REP.No.14/2010 for executing the decree that he had obtained. The execution petition discloses two prayers :

(a) to execute the sale deed in terms of the decree; and

(b) for delivery of possession under Order 21 Rule 34 CPC.

- It appears that the Execution Court had executed the sale deed on 13.11.2011.
- Now comes the second part of the prayer for effecting delivery. The Court had ordered delivery, and the bailiff of the Court had gone to the property, but he faced obstruction from a certain Dhanabakiyam, the revision petitioner herein. Hence, the decree holder came up with E.A.No.68/2016 under Order 21 Rule 97 for removal of obstruction, whereas the obstructor, the revision petitioner had preferred E.A.No.169/2017 under Section 47 CPC.,
- Vide separate orders dated 19.07.2019, the execution Court allowed the application in E.A.No.68/2016 filed by the decree holder, and dismissed the application in E.A.No.169/2017 filed by the revision petitioner. Challenging both the orders, the revision petitioner has filed these present two revision petitions.



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2. The learned counsel appearing for the revision petitioner would contend that the revision petitioner had purchased 40 cents in S.No.442/3 for valuable consideration, and that the decree put into execution is a collusive decree, based on the sale agreement entered into between the decree holder and the judgment debtor, to defeat her interest.

3. The learned counsel for the decree holder /first respondent would assert that on 16.07.2008, he had issued a notice both to the revision petitioner and her husband (respondents 2 and 3 in E.A.No.68/2016) not to buy the property as the former had a decree for specific performance in his favour, and this notice was received by them on 21.07.2008 and 22.07.2008 respectively. Having known about the decree in favour of the first respondent, the revision petitioner had put up a shed and also obtained electricity connection, which had caused obstruction to the bailiff in effecting delivery.

4. In reply, the revision petitioner would plead that admittedly on 16.07.2008, the decree holder had issued notice to her and her husband, and the reaction of



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the revision petitioner to the notice issued by the decree holder is obvious : that she had purchased the property even prior to the date of notice i.e., as early as on 23.04.2008 from the second respondent / defendant. The revision petitioner would further say that she had put up a construction worth Rs.30.0 lakhs; that she had even mortgaged the property that she had purchased, with Nambiyur State Bank and obtained a loan, and has also leased the property to a third party to meet the expenses incurred in the construction he had put up in the suit property.

5.1 Heard both sides. While the decree holder has come forward with a straight forward case, the investigation is all about whether the revision petitioner has right to obstruct delivery of the property.

5.2 In fitness of things, both E.A.No.68/2016 and E.A.No.169/2017 ought to have been tried together. It is seen that the trial Court has recorded evidence in E.A.No.68/2016, and both the revision petitioner and her husband were examined, and both concede in their cross-examination about the notice dated 16.07.2008, and also make a statement that upon receipt of notice from the decree holder, they visited the decree holder and enquired about it, and he is



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stated to have stated not to worry over it. The Execution Court did not find the ground on which the revision petitioner has laid her obstruction was convincing enough, and accordingly, it allowed E.A.No.68/2016 and dismissed E.A.No.169/2017. These orders are now in challenge.

6. The question involved is short, whether the decree holder / first respondent is entitled to obtain vacant possession of 40 cents in Sy.No.442/3 of Nambiyur Village. The facts narration indicates that the revision petitioner is a *pendente lite* purchaser. The records of the case indicates that she had purchased the property without even verifying the original title deeds of the property. And she brings in a theory during evidence, that after receipt of notice dated 16.07.2008 issued by the decree holder, the revision petitioner and her husband had met the decree holder. This is not pleaded either in the counter to E.A.No.68/2016 or in the application in E.A.No.169/2017.

7. What cannot be disputed is that the revision petitioner has purchased 40 cents property in Sy.No.442/3, *pendente lite* under the sale deed dated 23.04.2008. A *pendente lite* purchaser is always bound by the decree and by the consequences flowing therefrom. The Court is not even required to



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ascertain whether the *pendente lite* alienation of property is a bonafide obtained by the transferee. The only other point is whether the plaintiff and the sole defendant in the suit have colluded to defeat the interest of the revision petitioner. This contention cannot stand scrutiny since she had purchased the property on 23.04.2008, after the passing of the decree in the suit on 10.10.2007.

8. In conclusion, this Court does not find any merit in these revisions and both the revisions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.05.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To:

1.The Sub Judge

Gobichettipalayam, Erode District.

2.The Section Officer

VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
C.R.P Nos.3193 & 3194 of 2019

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