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CRP.No.716 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.716 of 2017 and
CMP.No.3613 of 2017

Ramachandran(died)

1.Pavunambal

2.Karpagam

3.Ramadevi

4.Rohini

5.Kathiravan

6.Komala

(amended as per order in

EA.No.139 of 2016)

... petitioners

Vs.

1.Sivaprakasam

2.Bobby Ammal

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order in EA.No.145 of 2006 in EP.No.303 of 2004 in OS.No.720 of 1988 dated 15.11.2016 on the file of the Principal District Munsif, Cuddalore and thereby allow the civil revision petition.

For Petitioners : Mr.R.Rajavelavan

For Respondents

For R1 : Mr.D.Ravichander

For R2 : M/s.P.Veena Suresh



CRP.No.716 of 2017

ORDER

This civil revision petition has been filed to set aside the fair and decretal order in EA.No.145 of 2006 in EP.No.303 of 2004 in OS.No.720 of 1988 dated 15.11.2016 on the file of the Principal District Munsif, Cuddalore, thereby dismissed the application seeking dismissal of the execution petition.

2. Heard, the learned counsel for the petitioners, the learned counsel for the first respondent and the learned counsel for the second respondent.

3. The petitioners are the legal heirs of the judgment debtor. Originally the suit property was owned by one, Angamuthu Ammal. She filed suit for declaration and recovery of possession in OS.No.720 of 1988 as against one, Ramachandran. The said suit was decreed by the judgment and decree dated 10.06.1992. Aggrieved by the same, appeal suit was filed and the same was also dismissed and the same was confirmed by this Court in SA.No.1068 of 1993 by the judgment and decree dated 11.03.2004. In pursuant to the decree, an execution petition was filed to execute the decree passed in OS.No.720 of 1988. The said suit was filed by her power of attorney i.e. the first respondent herein. The power of attorney filed execution petition in EP.No.303 of 2004 in order to execute the decree of recovery of possession from the said



CRP.No.716 of 2017

Ramachandran / judgment debtor. While pending the execution petition, the judgment debtor purchased the suit property from the principal i.e. Angamuthu Ammal by the registered sale deed dated 22.02.2006. After the purchase, the principal i.e. Angamuthu Ammal issued legal notice on 27.02.2006 against the first respondent herein, thereby cancelled the power of attorney executed by her in respect of the suit property. After purchase of the suit property, the judgment debtor died and the petitioners have been impleaded as respondents in the execution petition.

4. Once again, the said Angamuthu Ammal executed another sale deed in favour of the second respondent herein who is none other than the daughter of the first respondent herein by the sale deed dated 21.02.2006. However, it was registered only on 08.03.2006. It was executed one day prior to the sale deed executed in favour of the judgment debtor on 22.02.2006. On the strength of the sale deed, the second respondent filed petition to implead herself in the execution petition. It was allowed by the execution court. In the said scenario, the petitioners filed application to dismiss the execution petition in EA.No.145 of 2006 on the ground that the power holder cannot maintain execution petition since the principal herself executed sale deed in favour of the judgment debtor. Subsequently, the principal had issued notice to the power



CRP.No.716 of 2017

holder and thereby cancelled the power of attorney by the legal notice dated 27.02.2006. While pending the EA, the second respondent herein was impleaded as the second petitioner in the execution petition by herself on the ground that the subject property was purchased by her from the principal i.e. Angamuthu Ammal by the registered sale deed dated 21.02.2006. It was dismissed on the ground that it is unbelievable that the said Angamuthu Ammal executed sale deed on 22.02.2006 in favour of the judgment debtor by comparison of thumb impression. Admittedly the petitioners are in possession and enjoyment of the suit schedule property. Therefore, his principal i.e. Angamuthu Ammal through the power of attorney filed suit for declaration and recovery of possession in her favour.

5. When the judgment debtor suffered decree of declaration and recovery of possession, he intended to purchase the suit property and accordingly, he purchased the suit property from the said Angamuthu Ammal by the registered sale deed dated 22.02.2006. Now the second respondent has also purchased by the sale deed dated 21.02.2006. The said Angamuthu Ammal executed sale deed in her favour on 21.02.2006 and the same was registered only on 08.03.2006. Now the first respondent herein also died who filed execution petition on behalf of his principal. The principal i.e. Angamuthu



CRP.No.716 of 2017

Ammal also died long back on 27.02.2007. Therefore, the power holder cannot maintain the execution petition since the principal herself died.

6. Now the only point for consideration is that whether the subsequent purchaser i.e. the second respondent herein can maintain the execution petition or not. Admittedly, the judgment debtor purchased the property by the sale deed dated 22.02.2006 executed by the principal i.e. Angamuthu Ammal and they are in possession and enjoyment of the suit schedule property. At the same time, the second petitioner also purchased by the sale deed dated 21.02.2006 which was registered on 08.03.2006 executed by the same Angamuthu Ammal in respect of the suit schedule property. However, the second respondent without any possession of the suit property, simply she purchased and sale deed was executed in her favour while the first respondent and his principal were alive. Therefore, the second respondent also cannot maintain the execution petition to execute the decree passed in OS.No.720 of 1988.

7. In view of the above, the fair and decretal order in EA.No.145 of 2006 in EP.No.303 of 2004 in OS.No.720 of 1988 dated 15.11.2016 on the file of the Principal District Munsif, Cuddalore is set aside and this civil revision petition



CRP.No.716 of 2017

is allowed. Accordingly, the execution petition in EP.No.303 of 2004 is hereby dismissed. It is made clear that in respect of the title over the property, the second respondent is at liberty to agitate the issue separately in the manner known to law, if so advised. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

04.01.2023

Speaking/non-speaking
Index : Yes/No
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WEB COPY



CRP.No.716 of 2017



WEB COPY



CRP.No.716 of 2017

G.K.ILANTHIRAIYAN, J.

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To

The Principal District Munsif,
Cuddalore

CRP.No.716 of 2017

04.01.2023