



WEB COPY



CRP No.3830 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.02.2023

PRONOUNCED ON : 02.03.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.3830 of 2019
and
C.M.P. No.25272 of 2019

R.Ramesh

....

Petitioner

Vs

1. Varadan
2. Prema
3. Rajamani
4. Guruprasad

Sakkubai (Died)

5. R.Balan
6. R.Nandagopal
7. Malliga (Died)
8. Rani
9. Manjula
10. V.Sathish Kumar
11. V.Srinivasan
12. Priya
13. Meena

(Respondents 10 to 13 brought on record
as LR's of the deceased R7 Viz., Malliga
vide Court order dated 12.01.2023 made
in CMP Nos.17347, 17338 & 17343 of 2021
in CRP No.25273 of 2019)

....

Respondents



CRP No.3830 of 2019

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 04.10.2019 in E.P.No.114 of 2012 in O.S.No.92 of 1983 on the file of the Principal Subordinate Judge, Vellore.

For Petitioner : Mr.I.Abrar Md.Abdulla
for Mr.D.Gopinathan

For R1 to R4 : Mr.S.T.Bharath Gowtham
for Mr.T.R.Rajaraman

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 04.10.2019 in E.P.No.114 of 2012 in O.S.No.92 of 1983 on the file of the Principal Subordinate Judge, Vellore, thereby allowing the execution petition and ordered for delivery of possession.

2. The respondents 1 to 4 are the Decree Holders in the suit filed for partition in O.S.No.92 of 1983. In the said suit, a preliminary decree was passed on 28.07.1983 and on 11.09.2006, a final decree was passed by the Trial Court. On the strength of the final decree, the respondents herein filed Execution Petition in E.P.No.114 of 2012 to hand over possession of the suit property.



3. Resisting the execution petition, the petitioner herein filed counter stating that the respondents had already filed execution petition in E.P.No.18 of 2007 and had taken delivery of property. After recording the delivery of property, the said execution petition was terminated. In fact, the said delivery of possession through Court Authority with the help of police protection and recorded by the authorities concerned. In the present execution petition, one of the suit property has shown in the schedule of property. Once, the delivery of possession was handed over to the respondents, the second execution petition is not maintainable. The Execution Court allowed the execution petition and ordered for delivery of possession of the property. Aggrieved by the same, the present Civil Revision Petition.

4. The learned counsel for the petitioner would submit that the second execution petition is not at all maintainable, since already the respondents filed execution petition in E.P.No.18 of 2007, in which the possession of the property was delivered in favour of the respondents. Subsequently, the respondents 1 and 2 had entered into an agreement for sale with the petitioner. In pursuant to the said agreement for sale, he also filed a suit for specific performance in O.S.No.279 of 2013 and it is



pending on the file of the Principal Subordinate Judge, Vellore. That apart, after taking possession of the suit property, there was an arrangement between the petitioner's mother viz., Sakkubai, who is the original plaintiff in the partition suit and she had executed a Will in favour of the petitioner's sister, brother and grandsons. On the strength of the said Will, they also filed a suit for declaration in O.S.No.53 of 2021 on the file of the Principal Subordinate Judge, Vellore. Both the suits are pending in the same Court viz., the Principal Subordinate Judge, Vellore. Therefore, the second execution petition is not at all maintainable in order to defeat the specific performance in respect of the suit property. In fact, the respondents also failed to raise any objections as contemplated under Order 21 Rule 35 of CPC, after termination of the execution proceedings.

5. Per contra, the learned counsel appearing for the respondents would submit that though they filed the first execution petition in E.P.No.18 of 2007, a symbolic possession was delivered and no actual possession was delivered in favour of the respondents. At any point of time, they had executed any agreement for sale with the petitioner herein in respect of the suit schedule property. He filed



vexatious suit for specific performance in O.S.No.279 of 2013.

However, it cannot be resisted in a fulfilled manner. As far as the second execution petition is concerned, it is very much maintainable in order to execute the partition decree granted in O.S.No.92 of 1993.

6. In support of his contention, he relied upon the Judgment reported in **2016 (3) LW 481** in the case of ***V.G.Naidu @ Govindasamy Naidu Vs. Pahlajraj Gangaram @ Pahlaj Rai***, in which, this Court held that in view of the recurring infringement of the order of the Court, the subsequent purchaser was compelled to file the second execution petition. The subsequent purchaser is legally entitled to continue the eviction proceedings. Therefore, the eviction order by the Execution Court is perfectly legally correct. Further held that the judicial system cannot be permitted to be used as a feeding ground to get profit out of the litigation, by adopting delaying tactics.

7. Heard, Mr.I Abrar Md.Abdulla, learned counsel appearing for the petitioner and Mr.B.Gowtham, learned counsel appearing for the respondents and perused the materials available on record.



8. The mother of the petitioner herein filed a suit for partition as against the respondents in O.S.No.92 of 1983. In pursuant to the final decree, the respondents herein filed execution petition in E.P.No.18 of 2007 in respect of four items of the suit schedule property. The execution petition was ordered and accordingly, the delivery of possession in respect of the suit schedule property was recorded and subsequently the execution petition was terminated. However, according to the respondents in respect of petition schedule property, it was only paper delivery of possession and no actual possession was delivered in favour of the respondents. Therefore, they filed another execution petition in order to effect the delivery of petition schedule property. The only point for consideration in the present Civil Revision Petition is that whether the second execution petition is maintainable or not ? According to the petitioner, after taking delivery of petition schedule property, the respondents had entered into an agreement for sale with the petitioner herein on 20.10.2010. However, the respondents failed to execute the sale deed as agreed by them and as such, the petitioner was constrained to file a suit for specific performance in O.S.No.279 of 2013 on the file of the Principal Subordinate Judge, Vellore and it is pending.



9. That apart, the original plaintiff, the mother of the petitioner herein viz., Sakkubai, had some arrangements in respect of the petition schedule property and on the strength of the petition, she executed a Will in favour of the family member except the petitioner herein. After her demise, on the strength of the said Will, the legal representatives have also filed a suit in O.S.No.53 of 2021 for declaration and consequential injunction in respect of the petition schedule property and it is pending on the file of the Principal Subordinate Judge, Vellore.

10. A perusal of agreement for sale dated 20.10.2010, the possession of the petition schedule property was also handed over to the petitioner herein. Thereafter, the possession of the petition schedule property was not handed over to the respondents so far. Hence, the respondents filed another execution petition in order to effect the delivery of possession in respect of the petition schedule property. Admittedly, the execution petition filed in time. Therefore, it is very much maintainable and the execution petition rightly ordered for delivery of possession. The decision on applicability of constructive *res judicata* for execution proceedings is not necessary after amendment to Section 11 of CPC incorporating Explanation VII to Section 11 of CPC, which is read as follows :



CRP No.3830 of 2019

“Explanation VII : The provisions of this section shall apply to proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree”.

11. However, in the first execution proceeding, the delivery of possession was effected only by paper and no actual delivery was happened in respect of the petition schedule property. Therefore, the respondents was constrained to file another execution petition and it is very much maintainable.

12. Hence, this Court finds no infirmity or illegality in the order dated 04.10.2019 in E.P.No.114 of 2012 in O.S.No.92 of 1983 on the file of the Principal Subordinate Judge, Vellore. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

02.03.2023.

Speaking/Non-speaking order

Index : Yes/No

Neutral citation : Yes/No

Lpp



CRP No.3830 of 2019

To

The Principal Subordinate Judge,
Vellore.

G.K.ILANTHIRAIYAN,J.



WEB COPY



CRP No.3830 of 2019

Lpp

Pre-delivery order in
C.R.P. No.3830 of 2019

02.03.2023