



CRP. No.1289 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 1289 of 2019

Mari Gounder (Died)

- 1.Kannammal
- 2.Krishnamoorthy
- 3.Elumalai
- 4.Kaliammal
- 5.Lakshmi
- 6.Anjalai
- 7.Annakili

...Petitioners/Plaintiff/Petitioner

Vs.

- 1.Karal Peter Priyanathan
- 2.Paraisevi
- 3.Rajamanickam(died)
- 4.Shanmugam
- 5.Gandhimalli
- 6.Govindan
7. Kuppu Ammal
- 8.Ayyanar
- 9.Angammal
- 10.Pachayee
- 11.Muniammal
- 12.Kalaivani
- 13.Kaliyaperumal
- 14.Palaniammal
- 15.Manikandan



CRP. No.1289 of 2019

16.Anjamai

...Respondents/Defendants/Respondents

17.Ravi

18.Kalaselvi

19.Jayammal

R3 died R16 to R19 B/R as LRS of the deceased R3 viz., Rajamanickam
Vide Court order dated 10.11.2022 made in CMP No. 16409 of 2021 in
CRP No. 1289 of 2019 - TVTSJ

... Implead Respondents.

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 25.10.2017 made in E.P No. 181 of 2006 in O.S No. 137 of 1986 on the file of the Principal District Munsif Court, Tirukovilur.

For Petitioners : Mr.K.VenkathSubban
For R2, R4 R11 to R15: Mr.M.Sriram
For R3 & R7 : Died
For R6 & R10 : No appearance
For R1 : current address not known
For R5 : Not known
For R6, R8 and R9: Not claimed

ORDER

Challenging the impugned order dated 25.10.2017 passed by the the Principal District Munsif Court, Tirukovilur, in E.P No. 181 of 2006 in O.S No. 137 of 1986, the petitioners/deGREE holders preferred this revision



CRP. No.1289 of 2019

petition.

WEB COPY

2. The respondents herein are the legal heirs of the original defendant and judgment debtor in execution petition. Originally one Mari Gounder filed a suit in O.S No. 137 of 1986 on the file of the Principal District Munsif Court, Thirukkivilur, seeking to execute the sale dated in respect of suit properties by the receiving balance consideration as per the sale agreement dated 16.12.1979. The first defendant is a original owner of the suit property, the second and third defendants are alleged purchasers of the suit property from the first defendant, after the sale agreement dated 16.12.1979. During the pendency of the suit proceedings the first defendant died thereafter his legal heirs were impleaded as defendants 4, 5 and 6. Subsequently, second and third defendants also died their legal heirs were impleaded as parties.

3. Before the Trial Court, the plaintiff adduced the oral and documentary evidence, according to the plaintiffs as per the sale agreement dated 16.12.1979, he entered into a sale agreement with the first defendant to purchase the suit property and also he obtained a sum of rupees two thousand as advance then sale deed has to be executed on the month of April by issuing balance amount but the first defendant executed sale deed dated



CRP. No.1289 of 2019

31.12.1979 in favour of the second and third defendants ignoring the said sale agreement dated 16.12.1979 executed with the plaintiff. Hence the plaintiff filed suit.

4. Considering the oral and documentary evidence adduced on either side, the Trial Court concluded that as per the terms of the sale agreement if the owner refused to execute the sale deed, the plaintiff is entitled to get back the advance amount. Accordingly, the plaintiff is entitled to receive the advance amount since because first defendant owner executed the sale deed in favour of defendants 2 and 3, the plaintiff is entitle for the relief of specific performance, thereby dismissed the suit. Aggrieved over the findings of the Trial Court, the plaintiff has preferred an appeal in A.S No. 25 of 1993 on the file of the Subordinate Court, Villupuram, which independently analysed the oral and documentary evidence held that purchase made by the second and third defendants during the pendency of the sale agreement with the plaintiff is not bonafide one and sale agreement Ex.A1 is admitted by the first defendant thereby he bound to executed the sale deed by receiving balance consideration and execute sale deed in favour of the plaintiff and allowed the appeal. Thereafter the plaintiff's legal heirs/ petitioners herein



CRP. No.1289 of 2019

filed E.P No. 181 of 2006 in O.S No. 137 of 1986 on the file of the

WEB C

Principal District Munsif Court, Tirukovilur, to execute the sale deed as per

the decree after receiving balance sale consideration of Rs.3000/- from the decree holder. During the pendency of the execution petition first plaintiff died hence his legal heirs impleaded as parties and also first, second, third, fifth, and sixth defendants were died their legal heirs impleaded as parties and directed them to execute the sale deed as per decree. After considering the oral and documentary evidence the execution Court held that first defendant's legal heirs are fourth and sixth defendants or fourth, fifth and sixth defendant's legal heirs only or including above legal heirs with second and third defendants' legal heirs seven to ten Respondents are bound to execute the sale deed in favour of the petitioners. Only seven to sixteen defendants' are not bound to execute the sale deed. Since because seven to sixteen defendant's are legal heirs of second and third defendants, sale deeds executed in favour of the second and third defendants was declared as null and void. Hence, the petitioner wantonly rejecting fourth defendants and praying to execute the sale deed from second and third respondents' legal heirs is not maintainable and dismissed the execution petition. Challenging the findings of the execution Court, this revision petition filed.



CRP. No.1289 of 2019

5. The learned counsel for the petitioner submitted that the petitioners have obtained a decree in their favour, hence the respondents bound to execute the sale deed as per the decree but the Execution Court had dismissed the E.P petition as such is unjust and liable to be set aside. Further, he submitted that the Execution Court cannot go beyond the decree and also the Court below ought to have executed the sale deed as per the decree. Hence he prayed to allow this petition.

6. Heard the learned Counsel appearing for the petitioners and the learned counsel appearing for the respondents.

7. Admittedly, all the defendants died, during the pendency of the proceedings and their legal heirs were impleaded as parties. As per the findings of the Court below during the subsistence of the sale agreement, the sale deed executed between the first, second and third defendant is invalid and also directed the respondents to execute the sale deed in favour of the plaintiff. Now, the legal heirs of the second and third defendant stated that since their sale deed was not accepted by the Court below as on date, so they have no right over the property hence they are not liable to execute the sale deed in favour of the plaintiff, and first defendant and his legal heirs only bound to execute the sale deed as per the sale agreement. Hence the



CRP. No.1289 of 2019

respondent contention is that first defendant and their legal heirs alone liable to execute the sale deed. It is pertinent to note that the first defendant executed sale deed in favour of the second and third defendants during the subsistence of the sale agreement dated 16.12.1979. Furthermore, sale deed dated 31.12.1979 still stands in the name of the second and third defendants and not yet cancelled and it is valid document.

8. As discussed above, the sale deed stands in the name of the defendants are not yet cancelled by them, by executing cancellation of document. Further, the sale deed was declared as invalid by the Court, hence the defendants 2 and 3 are right persons to execute the sale deed but they died during the suit proceeding. Now, their legal heirs respondents 2, 4 to 6, 8 to 19 are bound to execute the sale deed in favour of the decree holders/petitioners. Accordingly, Executing Court failed to appreciate the above legal aspects and passed the order as such is unfair and liable to be set aside.



CRP. No.1289 of 2019

9. In result, this Civil Revision petition is allowed and the respondents

2, 4 to 6, 8 to 19 are directed to executed the sale deed in favour of the petitioners. No Cost. Consequentially Connected Miscellaneous petition(s), if any, is/are closed.

12.07.2023

pbl

Note: Issue order copy on 07.08.2023.



WEB COPY



CRP. No.1289 of 2019

T.V.THAMILSELVI,J.

Pb1

CRP. No.1289 of 2019

12.07.2023