



C.R.P.(MD).No.254 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	23.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD)No.254 of 2020
and
C.M.P(MD)No.10867 of 2022

C.Puhazh Arason

... Revision Petitioner

(Name of the Sole Petitioner is amended vide Court order dated 12.04.2023 made in CMP(MD)No.10869 of 2022 in CRP(MD)No.254 of 2020 by CSNJ)

Versus

M.Congress Pon Pandian (Died)

2.Therese

3.Arun Theepan

4.Gnana Ruban

... Respondents

(Respondents 2 to 4 are brought on record as Legal Representatives of the deceased Sole Respondent vide Court order dated 13.03.2023 made in CMP(MD)No.10871 of



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2022 in CRP(MD)No.254 of 2020
by CSNJ)

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Prayer : The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 22.10.2019 in E.A.No.394 of 2016 in E.A.No.306 of 2015 in E.P.No.96 of 2008 in O.S.No.106 of 2006 on the file of the Principal Sub Court, Tenkasi and to remand the proceedings for not examining the out of Court settlement document enclosed along with the petition and for retrial to examine the attested witness of the document.

For Revision Petitioner : Mr.C.Puhazh Arason
Party in Person

For Respondents : Mr.F.X.Eugene for R2 to R4

ORDER

This revision is preferred as against the order dated 22.10.2019 in E.A.No.394 of 2016 in E.A.No.306 of 2015 in E.P.No.96 of 2008 in O.S.No.106 of 2006 on the file of the Principal Sub Court, Tenkasi and to remand the proceedings for not examining the out of Court settlement document enclosed along with the above petition and for retrial to examine the attested witness of the document.

2. According to the Revision Petitioner, the Revision Petitioner



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borrowed a sum of Rs.4,00,000/- dated 15.01.2016 from one M.Seetharam, S/o. Manimuthu Nadar, Iythakattalai Village, Alangulam, Tenkasi District.

Though he had repaid some amount in the said loan, he was unable to pay the balance amount with interest. Hence, he met the Respondent herein who is none other his cousin brother for selling his properties to him, in order to discharge the above debt. Though the sale price was fixed at Rs.9,36,500/- but in the sale agreement only Rs.3,37,500/- was mentioned and a sum of Rs.1,00,000/- was paid as advance. It was agreed between the parties that the balance of Rs.2,37,500/- as per the sale agreement and the remaining amount of Rs.6,00,000/- as agreed between the parties, to be paid by the Respondent at the time of registration.

3. However, the Respondent refused to pay Rs.6,00,000/- as promised by him and therefore, the Petitioner refused to perform his part of contract. The Respondent filed a suit for specific performance in O.S.No.106 of 2006 as against the Revision Petitioner. The said suit was allowed and the Trial Court passed a decree in favour of the Respondent/Plaintiff against which the Petitioner filed an appeal in A.S.No.71 of 2012 which was dismissed by the III Additional District Court, Tirunelveli. Aggrieved by



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this, the Revision Petitioner preferred the second appeal in S.A.No.327 of 2015 which was also dismissed by this Court. Thereafter, the Respondent filed E.P.No.96 of 2008 for executing the decree passed in his favour. In the mean time, the Revision Petitioner took steps to file SLP before the Hon'ble Supreme Court and since his Advocate lost all the documents and case papers and so he was unable to prefer the S.L.P. before the Hon'ble Supreme Court. At that juncture, there was an out of Court settlement between the Petitioner and the Respondent on 20.04.2015.

4. The Petitioner had filed a copy of the out of Court settlement before the executing Court and inspite of that, the executing Court allowed E.P.No.96 of 2008 in O.S.No.106 of 2006 and delivered the suit properties to the Respondent herein. Hence, the Revision Petitioner filed a review petition in E.A.No.394 of 2016 before the Principal Sub Court at Tenkasi for reconsideration of the order.

5. He would submit that the sale agreement is illegal and invalid, fraudulently executed without mentioning the correct sale consideration. He would submit that the Trial Court failed to consider the



fact that the Respondent entered into an out of Court settlement requesting the Revision Petitioner not to contest in the execution petition. But to the contrary, the Respondent proceeded with the execution petition proceedings and obtained the order from the executing Court. The said order is illegal and same has to be nullified. He would submit that the out of Court settlement nullifies the legality of the sale agreement.

6. The Revision Petitioner would submit that since the value of the property has increased almost three times of the value mentioned in the agreement and because of the order of delivery of the suit properties, he had incurred a great loss. The Trial Court without examining the witnesses who had attested the out of Court settlement documents, ordered for delivery of the property which is unfair and unjust and as against the principles of natural justice. Hence, the Revision Petitioner prays to remand the matter to the Trial Court for examination of attested witnesses to the documents and for reconsideration of the out of Court settlement documents in the execution proceedings.

7. On the other hand, the learned counsel appearing for the



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Respondent would submit that the above petition is filed by the Revision Petitioner only with an intention to harass the Respondent/Plaintiff. The same is devoid of merits and liable to be dismissed.

8. Heard on both sides and perused the records.

9. The above suit was filed by the Respondent/Plaintiff for the relief of specific performance based on the agreement of sale, admittedly entered into by the Revision Petitioner and the Respondent herein. Though the Revision Petitioner admitted the execution of the sale agreement in the plaint, the Revision Petitioner would contend that he is not an absolute owner of the suit property and the partition suit filed by his sister is pending. However, the Trial Court passed a decree in favour of the Respondent against which the Revision Petitioner preferred an Appeal Suit in A.S.No.71 of 2012 which was dismissed by confirming the decree passed by the Trial Court in O.S.No.106 of 2006. Aggrieved by this, the Revision Petitioner preferred the Second Appeal before this Court which was also dismissed on 03.06.2015 by this Court confirming the judgment and decree passed by the Trial Court and the 1st Appellate Court. Thereafter, the Respondent/Plaintiff



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filed E.P.No.96 of 2008 for execution of decree, which was ordered on 14.03.2015 and thereafter, the Respondent/Plaintiff filed E.A.No.306 of 2015 for delivery of properties and the same was allowed by the executing Court. The Revision Petitioner filed a review petition in E.A.No.394 of 2016 to reconsider the orders passed in E.A.No.306 of 2015 and E.P.No.96 of 2008. The said applications were dismissed by the executing Court by observing that since the property has been already delivered to the Respondent decree holder, there is no necessity for reconsidering the order passed in the execution petition. Aggrieved by the order passed in E.A.No. 394 of 2016, the Revision Petitioner has filed the present Revision Petition by stating that the executing Court failed to consider the out of Court settlement document entered between the Petitioner and the Respondent and also failed to examine the attested witnesses to the document and therefore, the same shall be remanded back to the Trial Court for reconsidering the order passed in the execution petition and in the execution applications.

10. The executing Court in its order dated 22.10.2019 in E.A.No.394 of 2016 has rightly held that the reasons stated in the application is unsustainable for reviewing the order passed in execution



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proceedings and moreover, the Trial Court has clearly stated that since the delivery of the suit property was effected in favour of the Respondent/Plaintiff and that the petition is devoid of merits, rightly dismissed the above petition.

11. Therefore, no infirmity or perversity found in the order passed by the executing Court. The present Civil Revision Petition is devoid of merits and liable to be set aside.

12. Accordingly, this Civil Revision Petition is dismissed and the order passed by the executing Court in E.A.No.394 of 2016 is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2023

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Index: Yes/No

Speaking Order : Yes/No



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To

The Principal Sub Court,
Tenkasi



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

C.R.P.(MD)No.254 of 2020
and
C.M.P(MD)No.10867 of 2022

20.12.2023