



CRP (MD) No.1205 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	27.07.2023
Pronounced on	.12.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.1205 of 2022
and
CMP (MD).No.4913 of 2022

Vasantha

... Petitioner/Defendant

Vs

Somasundaram (died)

1.Senthamarai
2.Karunaharan
3.Rahul

... Respondents/ legal heirs of Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code seeking to set aside the order passed in E.P.No.48 of 2020 in O.S.No.150 of 2013 dated 24.02.2022 on the file of the learned Sub Judge, Pattukkottai.

For Petitioner : M/s.R.Balakrishnan

For Respondents : Mr.N.Balakrishnan



ORDER

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This revision petition is preferred against the order dated 24.02.2022 passed E.P.No.48 of 2020 in O.S.No.150 of 2013 on the file of the learned Sub Judge, Pattukkottai.

2. According to the revision petitioner/defendant, the deceased Somasundaram filed a suit in O.S.No.150 of 2013 on the file of the learned Sub Court, Pattukottai, seeking for the relief of specific performance and alternatively for recovery of money to the tune of Rs.5,40,000/-. In the plaint, it is alleged that on 27.08.2011 the petitioner executed a sale agreement in favour of the deceased Somasundaram agreeing to sell the suit schedule property for Rs.500/- per kuli and on the same day, the deceased Somasundaram paid a sum of Rs.5,40,000/- as advance and it is also alleged that the revision petitioner/defendant did not measure the suit property despite repeated request and that the revision petitioner/defendant was trying to sell the suit property to 3rd parties and hence, the respondents issued notice on 14.12.2012 for which the revision petitioner/defendant replied on 23.12.2012 denying the execution of sale agreement and on these allegations



among others, the deceased Somasundaram prayed for the relief of specific performance. It is contended by the revision petitioner that the above allegations levelled by the deceased Somasundaram in the suit are false. The revision petitioner would submit that the suit property originally belonged to her husband Selvam, who died on 17.04.2007 leaving behind two sons namely Brahadeeshwarar and Ilayaraja, who are entitled to one third share in the suit property and in order to change the patta, they filed the writ petition before this court in W.P.No.23055 of 2015 and as per the order passed by this Court, the revision petitioner/defendant approached the Revenue officials and during the enquiry the deceased Somasundaram was set ex-parte and an order was passed in favour of the respondent/plaintiff. Thereafter, the revision petitioner/defendant came to know about the pendency of the suit. Hence, she filed an application in I.A.No. 2019 of seeking to condone the delay of 1749 days in filing the petition to set aside the ex-parte decree. The said application was returned by the trial Court stating that entire records were submitted before the learned Principal District Judge, Thiruvaiyaru. Meantime, the respondent/plaintiff filed an application in E.P.No.48 of 2020 to execute the sale deed. The revision petitioner/defendant filed her counter stating that she had filed an application to set aside the ex-parte decree.



However, the Executing Court allowed the execution petition. Hence, the order passed by the Executing Court to execute the sale deed itself is unsustainable. The learned Trial Court failed to note that the petitioner has no exclusive right over the suit property as other legal heirs of her husband Selvam are entitled to two third share over the suit property and as such the order passed by the Executing Court needs interference.

3. On the other hand, the learned Counsel appearing for the respondent submits that the the trial Court has passed a decree for specific relief on 24.09.2014, and the deceased Somasundaram remained ex-parte through out the proceedings inspite of service of summons. Since the revision petitioner failed to execute the sale deed in favour of the respondents/plaintiffs, they filed an application in E.P.No.48 of 2022 to execute the sale deed in their favour. On perusal of records it is seen that the suit for specific performance was filed in O.S.No.150 of 2013 and an ex-parte decree was passed on 24.09.2014. Though the petitioner/defendant had knowledge of the suit she did not file an application to set aside the ex-parte decree. The Executing Court rightly observed that on the date of passing the order in execution petition no application to set aside the ex-parte decree was pending and



thereby allowed the execution petition directing the respondent to execute the sale deed in favour of the plaintiffs 2 to 4 in respect of the suit properties.

4. It is understood that the revision petitioner has filed an application to condone the delay for namesake. Moreover, the respondent has filed another suit in O.S.No.406 of 2018 when the revision petitioner attempted to sell the property. In that suit the revision petitioner has appeared promptly and despite an order of injunction, she had sold the property to one Iyyakannu on 01.08.2018. This fact is not disputed by the revision petitioner. Therefore, the petitioner has no locus standi to file this revision petition as she has no subsisting rights over the property as she had already sold the property in favour of the said Iyyakannu.

5. For the aforesaid reason this civil revision petition is dismissed. The order passed by the Executing Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

.12.2023

vsn



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K.GOVINDARAJAN THILAKAVADI

vsn

To

The Sub Judge, Pattukkottai.

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