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C.R.P(MD).No.2138 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.06.2023

Pronounced on : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.2138 of 2019

S.Thangarajan

... Petitioner

Vs.

1.Murugan
2.S.Nagarajan
3.S.Raja
4.S.Sivakami
5.T.Kannan
6.T.Raja
7.M.Geetha
8.T.Tamilarasi
9.Muthu @ Periyasamy

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating with the executable order and fair order dated 22.03.2018 made in E.A.No.170 of 2017 in E.A.No. 129 of 2010 in E.P.No.68 of 2008 in O.S.No.83 of 1986 on the file of the Sub Judge, Theni and set aside the same.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.P.Ponniah



ORDER

This Civil Revision Petition is filed against the order and decree dated 22.03.2018 passed in E.A.No.170 of 2017 in E.A.No.129 of 2010 in E.P.No.68 of 2008 in O.S.No.83 of 1986 on the file of the Sub Court, Theni.

2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.83 of 1986 on the file of the Sub Court, Theni. The suit was filed against the 9th revision respondent for specific performance and decree was passed in favour of the revision petitioner and it was confirmed in the appeal by the High Court of Madras. The petitioner has filed E.P.No.68 of 2008 for execution of decree and obtained registered sale deed in his favour. Thereafter, he filed E.A.No.129 of 2010 against the respondents for possession of the suit property. The revision respondents have filed E.A.No.170 of 2017 seeking for recording their possession over the suit property on the ground that they are mortgagors and also for paper delivery. The revision petitioner resisted the petition. The Executing Court allowed the petition on 22.03.2018. Aggrieved by the said order, the plaintiff has filed this Civil Revision Petition.



3. Heard both side and perused the records in this Civil Revision
Petition.

4. The learned counsel appearing for the revision petitioner has argued that the plaintiff is a decree holder in O.S.No.83 of 1986 on the file of the Sub Court, Periyakulam, which is filed for specific performance against the defendant/9th respondent herein and got registered sale deed as per order passed in E.P.No.68 of 2008. Even passing 20 years from the execution of decree, he could not get possession of the property. So, he filed the petition in E.A.No.129 of 2010 for possession through Court amin. That petition was ordered recording symbolical possession of the petitioner. The revision respondents 1 to 8 have filed the petition in E.P.No.170 of 2017 to recognise their possession over the suit property on the basis of mortgage deed. The petition was allowed without any reason. The petitioner can file a petition for recovery of possession which is ancillary to the decree for specific performance. Therefore, the impugned order has to be set aside. In support of his argument, the learned counsel for the petitioner placed reliance on the citation reported in **2002 Live Law (SC) 395 (Manickam @ Thandapani & Anr. Vs. Vasantha).**



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5. Per contra, the learned counsel appearing for the contesting respondents 1 to 8 vehemently contended that the Executing Court has clearly observed while passing an order in E.A.No.129 of 2010 dated 22.03.2018 paper delivery was recorded and the plaintiff is at liberty to file a separate suit for recovery of possession. The plaintiff has not preferred any revision against the said order. Further, the respondents 1 to 8 also stated that they are in possession of the suit property upon mortgage deed and only the plaintiff can get possession by discharging the mortgage through process of law. Therefore, the Executing Court has correctly passed the impugned order and this Civil Revision Petition may be dismissed. In support of his argument, they relied on the judgment reported in **2001 0 AIR SC 3712 (Adcon Electornics Pvt. Ltd. Vs. Daulat & Anr.)**

6. On hearing both and on perusal of records, it is clear that there is no dispute regarding decree for specific performance upon the sale agreement between the revision petitioner and the 9th revision respondent. The revision respondents 1 to 8 are mortgagors stating that they are in possession of the suit property upon mortgage executed



between themselves and the 9th respondent. The citation relied on by the petitioner is between the decree-holder and the judgment debtor. Here, the parties to the petition in E.A.No.170 of 2017 are decree-holders and the mortgagors under the judgment debtor. The specific contention of respondents 1 to 8 is that their mortgage is not discharged so far and they are in possession for the past 45 years. Their possession was recognized by the Executing Court. Moreover, the Executing Court has already passed an order in E.A.No.129 of 2010 giving liberty to the petitioner to file a separate suit for recovery of possession. The petitioner has not disputed it and he has not disclosed any fact that the said order was challenged before the Appellate Court and the same was set aside. In the above facts and circumstances, there is nothing wrong in passing the impugned order in E.A.No.170 of 2017 by the Executing Court and thus, this Civil Revision Petition fails.

7. In the result, this Civil Revision Petition is dismissed. No costs.

27.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Subordinate Judge,
Theni
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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