



C.R.P(MD) No.1853 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.07.2023
Pronounced on	06.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1853 of 2023

and

C.M.P.(MD)No.9300 of 2023

Veeramani (Died)

1.Ganapathi

2.Balamurugan

3.Prabhu

4.Ananthbabu

5.Shalini

... Revision Petitioners

Versus

1.R.Anitha

2.Thomma Nickolas

... Respondents



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Prayer : The Civil Revision Petition is filed under article 227 of Code of Civil Procedure, to set aside the order dated 18.11.2022 passed in E.P.No.79 of 2021 in O.S.No.51 of 2013 on the file of the Subordinate Judge's Court, Ramanathapuram.

For Revision Petitioners : M/s.F.X.Eugene

For Respondents : M/s.S.A.Ajmalkhan

ORDER

This Civil Revision Petition is preferred as against the order dated 18.11.2022 passed in E.P.No.79 of 2021 in O.S.No.51 of 2013 on the file of the learned Sub Judge, Ramanathapuram.

2. According to the Revision Petitioners, the 1st Respondent/Plaintiff filed the suit in O.S.No.51 of 2013 for declaration of title and for permanent injunction and to declare the sale deed, dated 22.02.2013 executed by the 1st defendant in favour of the 2nd defendant in document No.627 of 2013 as null and void and not to encumber the suit property by the 2nd defendant. The suit was decreed in favour of the Respondents/Plaintiffs. After the death of father of the Revision Petitioners, they filed an application to condone the delay of 264 days in filing the Appeal against the judgment and decree passed in O.S.No.51 of 2013 in



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I.A.No.1 of 2022 and the same is pending. In the mean time, the 1st Respondent as a decree holder filed the execution petition in E.P.No.79 of 2021 for delivery of possession before the Sub Court, Ramanathapuram. The Sub Court, Ramanathapuram without considering the pendency of I.A.No.1 of 2022 to condone the delay of 264 days for filing the Appeal Suit, passed the delivery order. The Revision Petitioners preferred the present Civil Revision Petition against the order passed in the Execution Petition.

3. It is submitted that mandatory injunction could not be executed and the recovery of possession could not be granted when there is no specific property for demolition and recovery and there are several chances for the Revision Petitioners to succeed in the Appeal Suit. It is further submitted that if demolition and recovery of possession is effected in favour of the decree holder, it would cause great hardship to the Revision Petitioners. Hence, the order passed in E.P.No.79 of 2021 is liable to be set aside.

4. The learned counsel appearing for the Revision Petitioners would submit that in the plaint schedule, the discretion of property is not mentioned and



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therefore, the suit for the relief of mandatory injunction is not maintainable. He would submit that if the decree is passed for mandatory injunction, it should be executed effectively without any problem. Therefore, the mandatory injunction in the absence of proper description of property for which it is sought for cannot be effectively granted in the present suit. However, the Trial Court without considering the above facts granted the decree for mandatory injunction in favour of the Respondent/Plaintiff which cannot be executed. To support his contention he has relied upon the judgments of this Court made in ***S.A.No.2007 of 2003*** in ***R.Appadurai Vs. T.K.Samikkannu*** case and ***S.A.No.314 of 2015*** in ***H.Ashraf Ali Vs. Chitra and Another*** case. He has also relied on the judgment of this Court made in ***Palaniammal Vs. Nanjunda Gounder*** case reported in ***2006 (3) 680 TLNJ (Civil)***.

5. On the other hand, the learned counsel appearing for the Respondents would submit that it is settled law that mere filing of Appeal would not amount to stay of operation of decree of Lower Court. The decree holder is entitled to execute decree unless it is stayed by superior Court. The 1st Respondent/Plaintiff filed the above suit in O.S.No.51 of 2013 for declaration of



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title and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the Plaintiff and to declare the sale deed dated 22.02.2013 executed by the 1st defendant in favour of the 2nd defendant as null and void and also restraining the 2nd defendant from encumbering the suit property. The Trial Court granted the decree in favour of the Plaintiff, declaring the title of the Plaintiff and declare the sale deed dated 22.02.2013 as null and void and also granted the relief for mandatory injunction and recovery of possession by directing the 2nd defendant to remove the construction made in the plaint schedule properties and to hand over vacant possession to the Plaintiff. To support his contention, he has relied upon the judgment made by this Court in *Anthiyur Town Panchayat Vs. G.Arumugam and Others* case reported in *2015 (2) CTC 598*.

6. On the aforesaid circumstances, the 1st Respondent/Plaintiff filed an application to execute the above decree in E.P.No.79 of 2021 in which delivery was ordered directing the Revision Petitioners/defendants to hand over the vacant possession to the Respondent/Plaintiff after removing the construction made in the suit property.



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7. It is seen from the records that the decree holder filed an Execution Petition in the year 2021 and the order was passed on 18.11.2022. The Revision Petitioners have ample opportunities to approach the Appellate Court and get a stay for the execution of the decree. It is rightly pointed out by the learned Counsel appearing for the Respondents, it is settled in law that mere filing of the Appeal would not amount to stay of operation of decree of Lower Court and the decree holder is entitled to execute the decree unless it is stayed by the Appellate Court.

8. In view of the above facts, I do not find any merits in this Revision. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.12.2023

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Index: Yes/No

Speaking Order : Yes/No



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To

The Sub Judge,
Ramanathapuram.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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and
C.M.P.(MD)No.9300 of 2023

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