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C.R.P.No.828 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.828 of 2021
and
C.M.P. No.6894 of 2021

R. Vijayakumar S/o. Raju

... Petitioner

Vs.

1. P.R. Kannappa Mudhaliar (died)
2. P.K. Kumaravel
3. A. Sundaram
4. Dhanam W/o. P.R. Kannappa Mudhaliar
5. Dhanalakshmi D/o. P.R. Kannappa Mudhaliar
6. Vedhavalli D/o. P.R. Kannappa Mudhaliar

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure

Code praying to set aside the fair and decreetal order of the learned
Principal District Judge, Erode dated 30.09.2019 made in E.A. No.12 of 2018
in E.P. No.21 of 2017 in O.S. No.221 of 2004.

For Petitioners : Mr. P. Dinesh Kumar

For Respondents : R1 – Died
R2 & R3 – Not ready in notice.
Ms. Zeenath Begum [for R4]
Mr. C.E. Pratap [for R5 & R6]



ORDER

The Civil Revision petition is filed challenging the order passed by the Executing Court dismissing the application filed by the petitioner seeking dismissal of the execution petition.

2. The respondents 1 and 2 herein obtained a decree for specific performance against the 3rd respondent. The respondents 1 & 2 are decree holders filed execution petition in E.P. No.21 of 2017 for execution of the decree for specific performance and possession. The petitioner herein claiming herself as purchaser of the property covered by the Suit agreement, pending suit, filed the instant application for a declaration that the decree is inexecutable. The main point raised by the petitioner before executing Court was that the present execution petition has been filed after expiry of 3 years from the date of decree and hence the decree for mandatory injunction has become time-barred.

3. The executing Court had taken a view that the main relief granted in the decree is for specific performance and hence the limitation for executing



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the decree cannot be restricted to three years as if it is a decree for mandatory injunction alone. Therefore, the executing Court dismissed the application.

Aggrieved by the same, the petitioner is before this Court.

4. The petitioner is not a bonafide purchaser and the decree passed in the Suit is binding on him. It is also stated that an appeal filed by the vendor of the petitioner is pending before this Court. The decree passed in specific performance suit in O.S. No.221 of 2004 is binding on the petitioner as pendent lite purchaser. The limitation point raised by the petitioner is also not acceptable to this Court, in view of the fact that the main relief sought for is decree for specific performance.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

Index : Yes / No
Internet : Yes / No
mjs

To
The Principal District Judge, Erode .

S.SOUNTHAR, J.

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