



CRP.No.4755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.4755 of 2023
and CMP.No28220 of 2023

1.P.Sakthivel

2.R.Periyasamy

... Petitioners / 3rd Parties

Vs

1.Ramasamy

... 1st Respondent /
Decree Holder / Plaintiff

2.Rathinavel

... 2nd Respondent /
Judgment Debtor / Defendant

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to strike off the Execution Petition in E.P.No.7 of 2019 in O.S.No.340 of 2015 on the file of District Munsif at Tiruchengode, pass such further or other order as this Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.V.R.Kamalanathan
for Mr.V.Gunasekar

For Respondents : Mr.Vijayan for R1



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CRP.No.4755 of 2023

ORDER

This revision petition is filed to strike off the Execution Petition in E.P.No.7 of 2019 in O.S.No.340 of 2015 on the file of District Munsif at Tiruchengode.

2. O.S.No.340 of 2015 on the file of District Munsif, Tiruchengode is a suit for specific performance filed by the first respondent against the second respondent. The said suit was decreed on 09.12.2016. In order to execute the decree, the decree holder filed R.E.P.No.7 of 2019 on the file of District Munsif at Tiruchengode.

3. Claiming that the civil revision petitioners are the owners of the property, the present civil revision petition has been filed seeking to strike off R.E.P.No.7 of 2017.

4. Heard Mr.V.R.Kamalanathan for Mr.V.Gunasekar for the revision petitioners and Mr.Vijayan for the first respondent.



CRP.No.4755 of 2023

5. Mr.V.R.Kamalanathan would submit that the judgment debtor after the decree had alienated the property to one Subramani vide sale deed dated 05.08.2020 in Doc.No.2139/2020. He would state that this document executed by the judgment debtor in favour of the third parties was challenged before the District Registrar, Namakkal, and the District Registrar had cancelled the document vide proceedings in MUU.MU.No.1796/AR5/2021 dated 12.07.2022. He would state that since the judgment debtor does not have any right over the property, the decree for specific performance passed based on the alleged right of the second respondent deserves to be set aside. Consequently, the execution petition filed based on the alleged right of the second respondent is not maintainable and the same is liable to be struck off. He would place reliance upon ***S.P.Chengalvaraya Naidu (Dead) by LRs. Vs Jagannath (Dead) by LRs and Others***, [(1994) 1 SCC 1] to plead that as the fraud has been played by the judgment debtor, the civil revision petition deserves to be allowed.

6. Per contra, Mr.Vijayan, would submit that the first petitioner Sakthivel had alienated the property in favour of his father Periyasamy, the second petitioner herein. After the alienation, the said Periyasamy



CRP.No.4755 of 2023

preferred O.S.No.194 of 2022 on the file of Subordinate Court, Tiruchengode, challenging the decree in O.S.No.340/2015.

7. Heard both sides and I have carefully perused the records.

8. The sheet anchor of the case of the petitioners is that the document executed by judgment debtor has been cancelled as he has no right in the property. I am of the view that for the mistake committed by the judgment debtor, the decree holder cannot be penalised. If the judgment debtor has created forged documents, he is taking desperate attempts to keep the property beyond the scope of litigation. In any event, the alienation by the judgment debtor in favour of Subramani or any other person would not be binding on the decree holder for the simple reason that the suit had been initiated in the year 2015 and all the events have taken place subsequently. The principle of *lis pendens* commences with the presentation of plaint and continues till the termination of the execution petition. If this principle is applied to the facts of the present case, any alienation made by the judgment debtor, pending the execution petition would not bind the plaintiff/decreed holder.



CRP.No.4755 of 2023

9. I am not inclined to strike off the execution petition in E.P.No.7 of 2019 in O.S.No.340 of 2015 on account of the fact that the said judgment debtor had indulged in all kinds of activities which run contrary to the decree. The fact remains that after the second petitioner has already initiated the proceedings in O.S.No.194/2022 on the file of Sub Court, Tiruchengode much prior to the presentation of this revision, the said fact has not been disclosed to this Court by the revision petitioners. As no mistake of the decree holder has been pointed out and all errors have been done by the judgment debtor, I am not inclined to entertain this revision, which has been filed to strike off the execution petition filed by the decree holder. Further more if the principle of suppression is to be applied, it is the civil revision petitioners who have suppressed the facts and not the judgment creditor.

10. In the light of the above observation, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2024

Index: Yes / No

Neutral Citation : Yes/No



CRP.No.4755 of 2023

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To:

- 1.The District Munsif
Tiruchengode.
- 2.The Section Officer
VR Section, High Court, Madras.



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CRP.No.4755 of 2023

V.LAKSHMINARAYANAN,J.,

ds

CRP.No.4755 of 2023

10.06.2024