



C.R.P.(NPD)No.2163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.2163 of 2023

and

C.M.P.Nos.13167 & 13169 of 2023

S.Savithri

.. Petitioner

Vs.

1.R.Padmavathy

K.Subramani (Died)

2.Amsa

3.Jayakanth

4.Sathyanathan

5.Sathiya

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the *ex parte* delivery order dated 23.08.2022 passed in E.A.No.1 of 2020 in E.P.No.22 of 2017 in O.S.No.12 of 2009 on the file of the learned II Additional District and Sessions Judge at Ranipet.



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For Petitioner : Mr.D.S.Ramesh

For R1 : Mr.Jeremiah Gregory John

For RR2 & 4 : Served, No Appearance

For RR3 & 5 : Not Ready in Notice, No Appearance

ORDER

The present Civil Revision Petition arises against an order of delivery passed by the learned II Additional District and Sessions Judge at Ranipet in E.A.No.1 of 2020 in E.P.No.22 of 2017 in O.S.No.12 of 2009 dated 23.08.2022.

2. Heard Mr.D.S.Ramesh, appearing on behalf of the petitioner and Mr.Jeremiah Gregory John, appearing on behalf of the 1st respondent.

3. I have to give the brief history of the case before I dwell into the merits of the submissions made by Mr.D.S.Ramesh.



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4. The civil revision petitioner was arrayed as the 2nd defendant in the suit for specific performance of an agreement of sale entered into between the 1st defendant and the 1st respondent before me.

5. It is the case of the 1st respondent/R.Padmavathy that an agreement of sale was entered into between herself and one K.Subramani/the allottee of the property from the Housing Board on 14.03.2005. As per the terms of the agreement, K.Subramani had to execute the sale deed on obtaining the sale deed from the Tamil Nadu Housing Board. Since he failed to do so, and acting contrary to the agreement as he had executed a sale deed in favour of the 2nd defendant/civil revision petitioner, the plaintiff was constrained to file a suit for specific performance. This suit was taken on file as O.S.No.124 of 2008 before the learned Principal District Judge at Vellore.

6. Thereafter, due to enhancement of pecuniary jurisdiction, it was received as O.S.No.12 of 2009 before the Sub Court at Vellore and later, it was transferred to the file of the Sub Court at Arakkonam and re-numbered as O.S.No.322 of 2010. Finally, on the grounds of pecuniary jurisdiction, the plaint was returned to be presented before the appropriate Court and it



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was received by the learned II Additional District and Sessions Judge at Vellore, Ranipet in its original number, namely O.S.No.12 of 2009.

7. Pending the suit, the 1st defendant/ K.Subramani died and his legal representatives were impleaded as defendant Nos.3 to 6. It is not in dispute that the parties had engaged a counsel who did not contest the proceeding, which resulted in an *ex parte* decree being granted on 31.03.2016. The trial Court came to the conclusion that the agreement is true and genuine. Finally, decreed the suit as prayed for on the aforesaid date.

8. In order to obtain a sale deed on the basis of the decree, an execution petition was filed in E.P.No.22 of 2017 before the learned II Additional District and Sessions Judge, Vellore at Ranipet. Even in this proceeding, the 2nd defendant/civil revision petitioner did not contest which resulted in the sale deed being executed through process of Court on 29.01.2020.

9. In order to take delivery of possession, an application was filed in E.A.No.1 of 2020 before the executing Court. The executing Court took the



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precaution of issuing notice to the judgment debtor before ordering the said application.

10. A perusal of the records shows that on 28.04.2021, the civil revision petitioner, who is the 2nd judgment debtor in the execution application, entered appearance through one Advocate by name Mr.K.Baluthiruvankatesan.

11. From 28.04.2021 till 23.08.2022, the matter was repeatedly adjourned to receive a counter from the 2nd defendant/civil revision petitioner. As the 2nd defendant/civil revision petitioner did not file a counter, she was finally set *ex parte* in E.A.No.1 of 2020, and delivery was ordered on 23.08.2022.

12. Both sides would agree that subsequently the Ameen Court had also ordered break open and police aid to the suit schedule mentioned property, and delivery had also been taken by the decree holder.



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13. Mr.D.S.Ramesh would submit that his client had filed an application before the executing Court to recall delivery and three other applications with a similar prayer. He would also submit that as against the decree, an appeal has been presented before this Court and it is at the stage of condonation of delay. In addition, he would state that his client has filed a suit in O.S.No.46 of 2023 on the file of the learned District Munsif at Arakkonam for declaration that the decree passed by the learned II Additional District and Sessions Judge at Ranipet in O.S.No.12 of 2009, dated 31.03.2016, is null and void.

14. This completes the narration of the facts necessary for disposal of this revision.

15. Mr.D.S.Ramesh would invite my attention to the decree passed by the learned II Additional District and Sessions Judge at Ranipet, and would plead that since it is only a decree for specific performance together with a decree for injunction, the Court below erred in ordering recovery of possession.



16. He would secondly submit relying upon the judgment in ***Adcon***

Electronics Private Limited vs. Daulat and Another [(2001) 7 SCC 698]

that since recovery of possession had not been specifically prayed for, the executing Court committed an error in ordering delivery of possession. He would further submit that five years after the purchase of the property, his client had put up a new superstructure over the same and therefore, delivery cannot be effected for the said property.

17. He would also attack the report of the bailiff stating that the premises were closed, and he would allege that the bailiff never visited the property. Finally, he would draw the attention of the Court to the address given by the plaintiff in the suit, and would plead that the plaintiff is actually residing elsewhere, and on the grounds of suppression, the *ex parte* decree and the order of delivery has to be set aside.

18. Mr.Jeremiah Gregory John would submit that the 2nd defendant had remained *ex parte* in the suit, in the execution petition as well as in the execution application for delivery. He would state that a decree for specific performance implies that there is a decree for possession and it is on that



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strength, he filed an execution application for obtaining delivery. He would submit that the other pleas taken by Mr.D.S.Ramesh cannot be gone into by the executing Court especially at the advance stage of ordering delivery.

19. I carefully considered the argument on either side and I have carefully gone through the records available.

20. Dealing with the first point made by Mr.D.S.Ramesh that when there is a decree for injunction, the question of granting recovery of possession does not arise requires some consideration. The suit is for a specific performance of an agreement of sale. In the suits of such nature, when the Court finally decrees the same, it need not specifically grant an order for delivery because delivery of possession is inherent in such suits.

21. It would not be out of place to point out that originally this Court through the judgment of Hon'ble Mr.Justice M.V.Muralidaran had taken a view more or less on the same lines as argued by Mr.D.S.Ramesh. He had held that unless and until the decree itself speaks of delivery of possession, the executing Court does not have jurisdiction to pass such an order. This



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order was tested in appeal before the Supreme Court in ***Manickam @ Thandapani vs. Vasantha [(2022) SCC online SC 2096]***. Hon'ble Mr.Justice V.Ramasubramanian (as his Lordship then was) held that in a suit for specific performance, there need not be a specific clause ordering delivery. On the sale deed being executed in favour of the decree holder, the cause of action to file an application for delivery arises. As seen in this case, even before the delivery was ordered, an Execution Petition in E.P.No.22 of 2017 was filed for execution of the sale deed and in pursuant to the orders of the Court, the sale deed was also executed on 29.01.2020. Therefore, all that remained was to file an application for delivery, the cause of action which arose to the decree holder on the execution of the sale deed by the Court. Therefore, an application was filed in E.A.No.1 of 2020. Applying the view taken by Hon'ble Mr.Justice V.Ramasubramanian in the aforesaid case, I do not find any merit in the argument of Mr.D.S.Ramesh that since there is no specific clause for recovery of possession, the Court ought not to have ordered delivery.

22. Insofar as the decree of injunction that is relied upon by Mr.D.S.Ramesh to point out that the plaintiff is in possession, this Court



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would have to meaningfully interpret the decree. The interpretation that I would give to the said decree is that the plaintiff will be entitled to take delivery of possession of the property on the basis of Clause Nos.2 and 3 of the decree dated 31.03.2016. After taking delivery of possession, the order of injunction in favour of the plaintiff shall enure.

23. The next point of Mr.D.S.Ramesh that the judgment made in *Adcon Electronics Private Limited vs. Daulat and Another [(2001) 7 SCC 698]* mandates a specific prayer for recovery of possession in terms of Section 22 of the Specific Relief Act, 1963, and that not having been sought for, the plaintiff is not entitled to execute the decree. The circumstances under which *Adcon Electronics's* case arose are entirely different from the facts of the present case. *Adcon Electronics's* case had to decide whether the suit for specific performance with or without the prayer for possession would be a “suit on land” in terms of Clause No.12 of the letters patent of the Bombay High Court. While discussing on the jurisdiction of the High Court, interpretation of Section 22 of the Specific Relief Act, 1963 arose. However, in this case as pointed out above, since there is a decree for specific performance in favour of the 1st respondent and as the delivery of



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possession inheres in such a decree, I am not in a position to apply the judgment of *Adcon Electronics*'s case in the present case.

24. Insofar as new superstructure that has been constructed, it is not in dispute that the superstructure has come into existence pending the litigation. The fact that the judgment debtor develops a property pending the litigation does not give him or her a right to defeat the decree. Knowing about the suit, the judgment debtor proceeded to develop the property and therefore, she has to satisfy the decree as it stands. The position of law is this, if the judgment debtor develops a property pending the litigation, it is not open to him or her to turn around and say that as the property has been developed subsequently, the fruits of the decree will not enure in favour of the decree holder.

25. Insofar as the plea that the bailiff had never come to premises is concerned, I have to refer to the judgment of *Hon'ble Mr. Justice M.Srinivasan* in *C.Ramasami vs. Kuruva Boyan and Others [(1991) 1 LW 244]* followed by *Hon'ble Mr. Justice K.Sampath* in *Komaiah vs. Subbulakshmi Ammal [(2002) 1 MLJ 647]*. The learned Judges held that if



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the Court records through the bailiff certain state of facts as existing, by virtue of Section 114 of the Indian Evidence Act, the Court has to presume that such position exists unless and until the person contradicting the statement comes forward with some evidence to the contra. In the present case, no such evidence has been put forth by the judgment debtor. Therefore, I cannot assume despite the vehement contentions of Mr.D.S.Ramesh that the bailiff had never visited the premises.

26. The last plea being that the plaintiff has given a wrong address and has obtained a decree, and this, according to Mr.D.S.Ramesh, would amount to a material suppression and therefore, a fraud had been played in order to obtain the decree. The 2nd defendant/2nd judgment debtor/civil revision petitioner had enough time from the year 2009 till the year 2016 to put forth her claim before the Court and defeat the case of the plaintiff. However, she did not do so. She kept quiet, suffered a decree, and subsequently in the execution proceeding, which was initiated for the execution of the sale deed, also she remained *ex parte*. Even in this proceeding, the civil revision petitioner did not trouble the Court by filing a counter so as to enable the Court to read the counter and come to a



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conclusion. At all points of time, the 2nd defendant/2nd judgment debtor was blissfully absent from the proceedings.

27. The principles of *res judicata* apply not only to two different proceedings but also in two different stages of the same proceeding. The question of suppression by the plaintiff by giving a false address should have been raised at the time of the suit. Having let that time go by, it is not open to the judgment debtor now to plead that the decree is null and void. If I were to countenance such an argument, then no decree passed by the Court would be capable of execution. Any judgment debtor will raise a plea of fraud and try to defeat the decree validly obtained.

28. As pointed out by Mr.Jeremiah Gregory John that the plaintiff has already approached this Court by way of a regular appeal, if at all it is open to the civil revision petitioner to agitate these points, it can be done so in the appeal and not before the executing Court. This is because, the executing Court cannot go beyond the decree and conduct a rowing enquiry as to whether the decree had been passed in a proper manner.



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29. In the light of the above discussions, I do not find any merits in the revision. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petitions are closed.

10.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned II Additional District and Sessions Judge
Ranipet

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and

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