



CRP No.5017 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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1.M.Sunderasan
2.M.Sudhakar
3.Geetha

... Petitioners

Vs.

Lakshmi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India fair and decretal order dated 03.02.2023 in EA No.106 of 2018 in EP No.23 of 2018 in OS No.43 of 2013 on the file of the learned Principal District Court, Dharmapuri.

For Petitioner

: Mr.N.Manoharan

ORDER

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This Civil Revision Petition is filed to set aside the fair and decretal order in EA No.106 of 2018 in EP No.23 of 2018 in OS No.43 of 2013 dated 03.02.2023 on the file of the learned Principal District Court, Dharmapuri.

2. The petitioners are the defendants 1 to 3 and the respondent is the plaintiff in OS No.43 of 2013 on the file of the learned Principal District Court, Dharmapuri. The respondent herein has filed the suit for specific performance on the basis of a sale agreement dated 06.06.2011 executed by the power agent of petitioners. The property in question originally belonged to Marappan, the father of the petitioners. After the death of petitioners' father, his legal heirs had executed a General Power of Attorney in favour of their relatives Kuppagounder, fourth defendant and his wife Dhanabakiyam on 14.07.1997. After the execution of the General Power of Attorney, one of the principal Rajathi (petitioners' mother) died on 23.08.2003. After that, the power agents executed a sale agreement in favour of the respondent herein on 06.06.2011. Subsequently, one of the power agent Dhanabakiyam



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died on 08.01.2012. Based upon the sale agreement dated 06.06.2011, the respondent herein filed the said suit. As the fourth respondent admitted the claim the respondent by filing written in the said suit, the suit was decreed as prayer for on 17.11.2014 and the petitioners were set ex parte. Thereafter, the respondent herein had filed an execution petition in EP No.37 of 2016 for execution of sale deed, which was closed and the executing court executed the sale deed in favour of the respondent. Now the present EP No.23 of 2018 was filed for delivery of possession by the respondent, in which these petitioners filed EA No.106 of 2018, objecting the delivery of possession and the same was dismissed by an order 03.02.2023. Challenging the said order, the petitioners have filed the present civil revision petition.

3. Learned counsel for the petitioners submits that since one of the principal died, execution of sale agreement by the power agent will be invalid. The Trial Court, without considering the contentions raised by the petitioner has dismissed the said application. Hence, the order passed by the



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Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. The fact reveals that the petitioners are defendants 1 to 3 and the fourth defendant is the power agent and the respondent is the plaintiff on the file of the Principal District Judge Dharmapuri. The respondent/plaintiff Laxshmi filed the suit for a decree of specific performance based upon an agreement dated 06.06.2011 executed by the power agent of the petitioners 1 to 3. The fourth defendant in the suit and his wife are the power agents. Further, the fact reveals that the schedule property originally belonged to one Marappan, father of the petitioners 1 to 3. After his death, his legal heirs and the petitioners/defendants 1 to 3 executed General Power of Attorney in favour of their relatives Kuppagounder, fourth defendant and his wife Dhanabakiyam on 14.07.1997. After the execution of the General Power of Attorney, one of the principle Rajathi died on 23.08.2003. Subsequently, based upon the General Power of Attorney, the power agents executed an



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unregistered sale agreement in favour of the respondent herein on 06.06.2011. Subsequently, one of the power agent Dhanalakshmi has also died on 08.01.2012. In the suit filed by the respondent herein in OS No.43 of 2013, these petitioners 1 to 3 remained ex parte and only the power agent/fourth defendant appeared and conceded execution of sale agreement. Under these circumstances, the suit was decreed on 17.11.2014. In pursuance of the decree, the respondent herein filed EP No.37 of 2016, which was contested by the petitioners. The executing court closed the EP on 29.11.2017 and executed a sale deed in favour of the respondent/plaintiff. In pursuance of the sale deed executed by the Court, the respondent herein has filed EP No.23 of 2018 for delivery of possession, in which these petitioners filed EA No.106 of 2018, which was dismissed by passing the impugned order.

6. It is not disputed that the petitioners have not filed any petition or have not taken any steps to set aside the ex parte decree passed in OS No.43 of 2013 but contested EP No.37 of 2016 filed by the respondent herein. The



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said EP was closed after contest and the sale deed was executed by the executing court in favour of the respondent herein. Under these circumstances, the petitioners have filed an objection petition in EA of 106 of 2018, objecting the delivery of the possession, which is unsustainable. The Trial Court rightly dismissed the EA filed by the petitioners and there is not reason to interfere with the impugned order as there is no merit in the revision.

7. In fine, the civil revision petition is dismissed. There will be no order as to costs. Consequently, CMP No.29413 of 2023 is closed.

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Index: Yes/No
Internet: Yes/No
mrn



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To
The Principal District Court, Dharmapuri



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V.SIVAGNANAM, J.

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