



C.R.P.[NPD].No.4807 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4807 of 2024 & CMP.No.26883 of 2024

G.Prema

. . . Petitioner

Versus

1. R.Srikumr
2. K.Balasubramaniam
3. K.Ranganathan
Respondents

. . .

PRAYER : Petition filed under Article 227 of Constitution of India to condone the delay of 60 days in filing this Civil revision Petition against the fair and final Order passed dated 10.02.2023 made in E.A.No.1 of 2022 in E.P.No.65 of 2020 on the file of the Principal Subordinate Judge, Tiruppur.

For petitioner : Mr.S.Suganthan

For respondents : Mr.Myilsamy – R1



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ORDER

Challenging the Order of dismissal of the application filed by the revision petition to stay the execution proceedings, this Civil Revision Petition has been filed.

2. The brief background of the case is as follows :

The first respondent has originally filed a suit in O.S.No.536 of 1990 in respect of the subject property to enforce a contract executed by the first defendant and the suit has been decreed in favour of the first respondent. As against the said decree, the appeal filed in A.S.No.4 of 1997 has also been dismissed and the decree has also been confirmed in the Second Appeal in A.S.No.160 of 2000. It appears that the first respondent has also filed an execution petition earlier in E.P.No.43 of 2011 for execution of the sale deed. The said Execution Petition has been dismissed for non filing of draft sale deed on 25.02.2020. Be that as it may.



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3. While so, the revision petitioner has filed a suit for recovery of money as against the third respondent herein in O.S.No.197 of 2016 for recovery of a sum of Rs.2,53,000/-. The said suit has been decreed exparte. Now, according to him, he has filed an execution petition in E.P.No.242 of 2017 and also got an attachment of the property. Therefore, he has filed an application for stay in execution proceedings which has been filed to execute the document in pursuant to the Specific performance decree which has been confirmed in the second Appeal in the year 2011. The said application has been dismissed stating that the decree passed in O.S.No.197 of 2016 is hit by doctrine of res-judicata. Challenging the same, the present revision petition has been filed.

4. It is the specific contention of the petitioner that he has also got an attachment in respect of the same property in an execution proceedings filed by him to enforce the money decree. Hence, submitted that the execution petition filed by the respondent is not maintainable in respect of the very same property.



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5. I have perused entire materials. The very contention of the revision petitioner cannot be sustained in the eye of law. The very attachment passed in favour of the revision petitioner in the execution petition in E.P.No.243 of 2017 itself is not proper. On the date of attachment, the judgment debtor in the money suit did not have any right in the immovable property. The suit for specific performance has already been decreed and confirmed upto the Second Appeal in the year 2011 itself and the Court has to execute the sale deed. At this stage, an attachment cannot be granted for the very same property. As right has already declared in O.S.No.576 of 1990 and to execute the document, the Execution petition is already pending, that execution petition cannot be stalled by the money decree holder who obtained an exparte decree, that too after the suit for specific performance which has already reached finality and specific performance has already been granted in favour of the first respondent. The right of the first respondent has already been fructified by way of decree for specific performance as early as in the year 1990. In such view of the matter, the impugned Order dismissing for a different reason, but dismissing cannot be interfered. It is for the revision petitioner to work out his



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remedy in the manner known to law and he can seek attachment of other property of the judgment debtor.

6. With the above direction, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

VTC

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