



C.R.P.No.475 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

**C.R.P.No.475 of 2024**

A.Kasi

... Petitioner

Vs.

1.Natarajan

2.Thirunavukarasu

3.Poongothai

4.Minor Lokesh

5.Minor Keerthana

... Respondents

**PRAYER:** Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the decreetal order dated 25.07.2023 made in unnumbered E.A.No.Nil of 2022 in E.A.No.2 of 2018 in E.P.No.13 of 2013 in O.S.No.15 of 2008 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.R.Rajarajan  
for Mr.E.P.Senniyangiri

**ORDER**

This revision petition has been filed seeking to set aside the rejection order dated 25.07.2023 made in unnumbered E.A.No.Nil of 2022 in



C.R.P.No.475 of 2024

E.A.No.2 of 2018 in E.P.No.13 of 2013 in O.S.No.15 of 2008 on the file of  
the Principal District Court, Villupuram.

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2.The petitioner filed an unnumbered E.A.No.Nil of 2022 to restore E.A.No.2 of 2018, which came to be rejected by the Lower Court on 25.07.2023 for the reason that the Execution Petition in E.A.No.2 of 2018 filed under Section 47 of C.P.C. was dismissed for default on 14.02.2019 for not taking steps. Further, observed that already the suit schedule property was executed in favour of the decree holder and the E.P. itself is not in existence, hence, this petition is not maintainable and rejected.

3.The contention of the learned counsel for petitioner is that the petitioner is an absolute owner of the suit property having purchased the same from the absolute owner. The property was situated in Tiruvannamalai. One Thirunavukkarasu/second respondent herein along with his son Sankar, who passed away during the pendency of the suit, earlier executed a registered



C.R.P.No.475 of 2024

sale deed in favour of the petitioner in Doc.No.1800 of 2010 for consideration and the petitioner was in enjoyment of the property. This being so, behind the back of the petitioner a civil suit in O.S.No.15 of 2008 filed by the first respondent, against his father V.Thirunavukarasu/second respondent and his brother/T.Sankar. After Sankar passed away, his legal heirs were arrayed, who are respondents 3 to 5 herein.

4.The case projected by Natarajan/first respondent is that he was willing to purchase  $2/3^{\text{rd}}$  of the undivided share of the suit property and fixed the price as Rs.16,00,000/- and he paid Rs.15,00,000/- earlier and balance Rs.1,00,000/- ought to be paid and there was a sale agreement which reduced into writing dated 10.02.2006. In the plaint, he admitted that the said Sankar/second defendant received the original agreement to make an endorsement of extension of time. But to the shock and dismay of the plaintiff and persons present there, all of a sudden he torn the agreement into pieces and left the place. Hence, with the xerox copy of the agreement dated



C.R.P.No.475 of 2024

10.02.2006, the suit was filed. This suit was decreed on 11.11.2008. The petitioner is not a party to the suit.

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5. According to the petitioner, it is a fraud played by the respondents 1 and 2 against the petitioner. Suppressing the fact that a civil suit is pending, they sold the property to the petitioner for consideration, who purchased the property, revenue records mutated and he was in possession and enjoyment of the property. That being so, in the year 2013, E.P.No.13 of 2013 filed by the first respondent to execute the decree. The petitioner is not a party in the E.P. Proceedings also. Thereafter the E.P. was allowed and the sale deed was executed by the District Judge, Villupuram in favour of the first respondent but the property was not taken possession, which was in the petitioner's possession and enjoyment. Thereafter, on coming to know about the fraud played by the respondents 1 and 2, the petitioner filed E.P.No.2 of 2018 to declare the sale deed dated 01.03.2014 as null and void. At the initial stage, the Registry of the Lower Court raised objections and questioned its



C.R.P.No.475 of 2024

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maintainability. Thereafter, it was taken on file and notice ordered to the respondents. The respondents 1 to 3 called absent and set ex-parte. For taking steps for third respondent for appointment of Court Guardian for the minors/respondents 4 and 5, the case was posted to 06.04.2018. Thereafter, it was periodically adjourned for taking steps and finally on 14.02.2019, finding that there was no representation for the petitioner and steps not taken, the petition was dismissed. Thereafter, the petitioner filed unnumbered E.A.No.Nil of 2022 to restore E.A.No.2 of 2018 and the same was dismissed vide impugned order dated 25.07.2023.

6.The contention of the petitioner is that when E.A.No.2 of 2018 was filed, question of maintainability raised, thereafter, the said E.A. was numbered and it was dismissed for non prosecution on 14.02.2019. The set aside petition in unnumbered E.A.No.Nil of 2022 was filed as early as on 08.03.2019. The trial Court ought to have considered the set aside petition and pass orders on merits, on the other hand given a finding that there is no E.P. pending as on date, which is not proper.



C.R.P.No.475 of 2024

WEB COPY

7.In support of this contention, the learned counsel relied upon the decision of the Hon'ble Apex Court in *M.P.Shreevastava vs. Veena* reported in *AIR 1967 SC 1193*.

8.In view of the same, this Court set asides the rejection order dated 25.07.2023, passed in unnumbered E.A.No.Nil of 2022, further directs the Principal District Court, Villupuram to number the unnumbered E.A.No.Nil of 2022, which was rejected, thereafter, considering the petitioner's contention dispose of the same on merits.

9.With the above directions, the Civil Revision Petition is allowed.

No costs.

03.07.2024

Index : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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C.R.P.No.475 of 2024

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To  
The Principal District Judge,  
Villupuram.



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C.R.P.No.475 of 2024

**M.NIRMAL KUMAR, J.**

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**C.R.P.No.475 of 2024**

**03.07.2024**