



C.R.P.[NPD].No.4473 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4473 of 2024

R.Dhatchanamoothi

Represented by his Power Agent R.Muthumanikkam @ Soba

No.16, VOC Street, Thiruvarur Taluk and Municipality,

Thiruvarur District – 610 001.

. . . Petitioner

Versus

1. T.Kannan

2. T.Hari

3. Shyamala

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair Order and decreetal Order dated 12.09.2024 in I.A.No.5 of 2024 in O.S.No.21 of 2012 on the file of the Principal District Court, Tiruvarur as illegal and incompetent.

For petitioner : Mr.V.Raghavachari, Senior Counsel
for Ms.Srimathi V.

Respondents : Mr.P.R.Krishnaraj – R2



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Mr.Manuraj – R3

ORDER

Challenging the Order allowing the application filed under section 151 of Code of Civil Procedure by setting aside the sale deed registered pursuant to the ex parte decree passed in O.S.No.21 of 2012 in the execution proceedings with a further direction to the Sub Registrar to make the entry in the Book – I, the present Civil Revision Petition has been filed.

2. Brief facts leading to filing of this Civil Revision Petition are as follows :

The suit in O.S.No.21 of 2012 has been filed by one Dhatchanamoorthis through his power agent for enforcement of the agreement of sale dated 06.12.2004. It is stated in the plaint that the total sale consideration is Rs.12,20,000 and an advance of Rs.10,00,000/- has been paid on the date of agreement. Subsequent to the advance, a further sum of Rs.1,25,000/- has also been paid and in total a sum of Rs.11,25,000/-



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has been paid towards the sale consideration. However, the defendant evaded to execute the sale after the receipt of the balance sale consideration. The suit has been originally decreed exparte on 11.06.2013 and an execution petition has been filed in E.P.No.74 of 2013 and in the execution proceedings, the sale deed has been executed by the Court in favour of the revision petitioner. Thereafter, it appears that the exparte decree has been set aside in I.A.No.103 of 2016 and an application has been filed under section 151 of Code of Civil Procedure to set aside the sale and also seeking a direction to make entry in the Book I and the said application has been allowed by the trial Court. Challenging the same, the present civil revision petition has been filed.

3. The main contention of the learned Senior Counsel appearing for the petitioner is that the restitution is not permissible under section 144 of Code of Civil Procedure. The learned Senior Counsel vehemently contended that the restitution is permissible only when the decree or Order has been reversed or modified in the appeal or in other proceedings. Therefore, it is



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his contention that once the sale deed has already been executed in the exparte decree, in the event, the revision petition succeeds in the main suit, there need not be any separate sale deed. Therefore, assailing the Order passed by the trial Court learned Senior Counsel submitted that the Order passed by the trial court has to be interfered.

4. I have perused entire materials. Admittedly, the sale deed has been executed pursuant to the exparte decree passed in the suit filed for specific performance of the contract said to have been executed in the year 2004. Now the said exparte decree has been set aside in I.A.No.102 of 2016 and delay has also been condoned. It is to be noted that the above Orders have not been challenged. Now it is stated by the learned Senior Counsel appearing for the petitioner that they have filed SLP. However, no number has been assigned. Be that as it may.

5. It is further to be noted that as on today the exparte decree has



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been set aside and no stay whatsoever has been granted by the higher Courts. Since there is no decree at all, at this stage, the revision petitioner cannot contend that he derived title by virtue of the sale deed executed in the execution proceedings. It is further to be noted that the very sale deed has been executed pursuant to the exparte decree. When the exparte decree itself is set aside, mere registration of the sale deed in execution proceedings will not convey any better title.

6. Further, the contention of the learned Senior Counsel that the restitution cannot be applied cannot be countenanced. Even assuming that the provision under section 144 of Code of Civil Procedure is not strictly applicable to the facts of the present case, that will not deter the trial Court to exercise its jurisdiction which is inherent in it and arrest the prejudice caused to the parties at the act of the Court. It is to be noted that only on the basis of the sale executed by the Court, the revision petitioner claim title. If the said sale deed is allowed to be on record and used for any other purpose, it would certainly cause prejudice to the respondents . Therefore, trial Court



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by its inherent jurisdiction has set right the mistake and restored the status quo ante which will not cause prejudice to either party. Therefore, the trial Court has rightly exercised its jurisdiction which is inherent in it to prevent prejudice. In such view of the matter, I do not find any merits in the revision petition

7. It is also submitted that during the existence of the agreement, subsequent purchase has also been made in the year 2011. In such view of the matter, whether the subsequent purchaser is a bonafide purchaser without notice to the agreement or not, is a matter of evidence and the same has to be seen only in trial. Now a third party also claim right on the basis of the purchase in the year 2011. They are also impleaded in the suit as defendants. This Court, in order to protect the interest of the parties in the suit, restrain both the parties from making any alienation of the suit properties till the disposal of the main suit. The trial Court shall dispose of the main suit expeditiously without any further delay.

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



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No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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VTC

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