



CRP No.4785 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 25.09.2024

Order pronounced on : 27.09.2024

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.4785 of 2017
& C.M.P.No.22500 of 2017

K.K.Loganathan

..Petitioner

Vs.

1.T.Sampath (Died)
2.Arunprasath
3.Akil Prasath
4.S.Santamani
5.Meena

..Respondents

[RR 4 & 5 are brought on record as
LR's of the deceased R1 vide order
dated 13.09.2023 in
C.M.P.Nos.17493, 17496 & 17497
of 2023 in CRP.No.4785 of 2017]

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India,
to set aside the fair and decreetal order dated 07.12.2017 made in E.P.No.59 of
2014 in O.S.No.08 of 2001 on the file of the Subordinate Judge, Bhavani.

For Petitioner : Mr.R.Sunil Kumar

For Respondents

For R1 : Died (steps taken)

For RR2 & 5 : No appearance



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ORDER

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This civil revision petition is filed as against the order dated 07.12.2017 passed in E.P.No.59 of 2014 in O.S.No.08 of 2001 on the file of the Subordinate Judge, Bhavani.

2.The revision petitioner is the defendant in a suit for specific performance. The revision petition is preferred by the 1st defendant challenging the order dated 07.12.2017 in E.P.No.59 of 2014 in O.S.No.08 of 2001 on the file of the Subordinate Judge, Bhavani, on the ground that the Executing Court has ordered sale of the entire property worth not less than Rs.75,00,000/-, for discharge of a decree for a meager sum of Rs.5,71,250/-.

3.I have heard Mr.R.Sunil Kumar, learned counsel for the revision petitioner. Despite service of notice on the respondents 2 to 5, there is no appearance on their side.

4.Mr.R.Sunil Kumar, learned counsel for the revision petitioner would take me through the impugned order and contend that the revision petitioner suffered a decree for an alternate claim in a suit for specific performance. The Court while dismissing the main decree for specific performance, granted the



alternate relief of refund of advance. The very same property, which was subject matter of agreement of sale, was sought to be sold in execution proceedings.

According to the revision petitioner, the property is worth around Rs.1 crore and the amount payable to the decree holder is only around Rs.5,70,000/- and therefore, the order passed by the Executing Court was clearly amounting to excessive execution.

5.The learned counsel for the revision petitioner placed reliance on the decision of this Court in ***Pavayammal (Deceased) and Others Vs. Thangammal (Deceased) and Others*** reported in ***2015 (2) CTC 285***, where this Court applying the provisions of Order XXI Rule 64 of CPC, held that the Court is duty bound to order only that portion of the property that would be sufficient to satisfy the decree and not the entire property.

6.In fact, recently, this Court in ***CRP.(NPD) Nos.4092 & 4093 of 2023 (Kumar @ Kumaran Vs. Bose Ponnambalam and Others)*** dated ***26.07.2024***, dealt with the issue of excessive execution under Order XXI Rule 64 of CPC and held that it is the duty of the Court to perform its task and the failure to perform such task gives a right to any person affected by the said order to bring to the notice of the Court, the failure in performance of such a duty, relying on



the decision of the Hon'ble Supreme Court in *Sai Enterprises Vs. Bhimreddy*

Lxmaiah reported in (2007) 13 SCC 576. This Court held the sale to be irregular when it violated the mandate of Order XXI Rules 64 and 66 of CPC as the Executing Court, without even noticing the requirement of Order XXI Rule 64, has directed sale of the entire property which was subject matter of the suit for specific performance.

7. In the present case, admittedly, the suit was filed in the year 2001. Even according to the plaintiff, the sale consideration was Rs.2,50,000/- during 1998 and the plaintiff had paid an advance of Rs.2,20,000/- leaving a balance of Rs.30,000/- alone. The Trial Court decreed the alternate relief of refund of advance to the tune of Rs.2,20,000/-, together with interest at 9% per annum from the date of plaint till the date of decree and thereafter at 6%. It is this money decree which was sought to be executed in the execution proceedings by the respondent/decreed holder.

8. It is seen from the guideline value extract for the survey numbers concerned that even the guideline value was around Rs.75,00,000/-. Unfortunately, the Executing Court, without noticing all these relevant factors and also the dictum of the Hon'ble Supreme Court and this Court, coming down



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very heavily on excessive execution, has directed sale of the entire property. The language employed by the legislature in as much as stating “necessary to set aside decree” clearly indicates that sale of the property beyond the decretal amount would not be permissible under law. Therefore, the Trial Court has failed in its duty to adhere to the mandate of Order XXI Rules 64 and 66 of Code of Civil Procedure. For all the above reasons, the impugned order is liable to be set aside.

9.In fine, the Civil Revision Petition is allowed. The impugned order dated 07.12.2017 made in E.P.No.59 of 2014 in O.S.No.08 of 2001 on the file of the Subordinate Judge, Bhavani, is hereby set aside. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.09.2024

Speaking/Non-speaking order

Index : Yes/No

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To

The Subordinate Judge, Bhavani.

P.B.BALAJI.J.



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