



WEB COPY



C.R.P. No. 4349 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 4349 of 2022

1. P.Venugopal

2. V.Sudhakar

3. V.Suresh

... Petitioners / Petitioners /
Judgment Debtors / Defendants

Vs.

P.Vasantha

... Respondent / Respondent /
Decree Holder / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 30.11.2022 in E.A. No. 528 of 2020 in E.P. No. 57 of 2014 in O.S. No. 321 of 1984 on the file of the Subordinate Court, Poonamallee.

For Petitioners : Mr. P.Valliappan, Senior Counsel
for Mr. S.Kingston Jerold

For Respondent : Mr. V.Manohar

ORDER



WEB COPY

This Civil Revision Petition has been preferred as against the order dated 30.11.2022 in E.A. No. 528 of 2020 in E.P. No. 57 of 2014 in O.S. No. 321 of 1984 on the file of the Subordinate Court, Poonamallee, wherein, these petitioners have filed a petition before the Execution Court to rescind the sale agreement dated 27.04.1980 and terminate the proceedings in O.S. No. 321 of 1984 under section 28 of the Specific Relief Act, 1963. The said petition was dismissed by the Execution Court. Aggrieved by the said order, the present Civil Revision Petition is filed.

2. The case of the petitioners is that they are the defendants in the main suit and they filed the main suit for the relief of specific performance of contract and the same was decreed. Thereafter, the said decree was challenged before the District Court, Chengalpattu through A.S. No. 90 of 1997 and the same was also dismissed. Thereafter, second appeal in S.A. No. 1801 of 1998 was also filed before this Court and the same was also dismissed. Thereafter, Special Leave Petitions in S.L.P. Nos. 14165 and 14166 of 2016 were filed and the same were also dismissed. Thereafter, the plaintiff in O.S. No. 321 of 1984 of 1984 has filed E.P. No. 57 of 2014. The decree holder has not deposited the balance of sale consideration. As per the exparte decree, he has to deposit the balance of sale consideration within two months. But the balance sale consideration was deposited only on 17.12.1993. The decree



WEB COPY

holder wantedly has not sent for the amount already deposited in O.S. No. 79 of 1983 on the file of Sub Court, Chengalpattu. The balance of sale consideration has not been deposited before the Court where the said case was transferred to Sub Court, Poonamallee. The decree amount is Rs. 39,858/-. But the value of the land is above 9 Crores. The plaintiff and her husband claimed under a lease dated 20.01.1975 but till date they have not paid any rent. Therefore, the sale agreement dated 27.04.1980 is to be rescinded and the proceedings in O.S. No. 321 of 1984 on the file of Sub Court, Poonamallee are to be terminated.

3. The case of the respondent is that the original suit in O.S. No. 321 of 1984 was decreed by the Sub Judge, Poonamallee and thereafter, the matter went up to Supreme Court and SLPs were also dismissed. Thereafter, the respondent filed the Execution Petition. The agreement was entered into in the year 1980 for a sum of Rs. 35,000/-. The balance amount was deposited and the same was also admitted by the petitioners and the said amount has been made available in the Court. The scope of Section 28 of the Specific Relief Act, 1963 is not empowered to Execution Court and the procedure contemplated therein are different in nature and the petitioners have not invoked such a procedure to enable him to attract Section 28 or that of any other provisions of law in this regard. Therefore, the Civil Revision Petition is



not maintainable and the same is liable to be dismissed.

WEB COPY

4. Before the Execution Court, no oral or documentary evidences adduced on either side. The Execution Court, after hearing both sides, dismissed the application.

5. The learned counsel appearing for the petitioners would contend that the petitioners are the defendants in the main suit and they are the judgment debtors. The respondent/deGREE holder obtained decree for specific performance of contract but after decree, he has not deposited the amount. In fact, originally the suit filed before the Sub Court, Chengalpattu in O.S. No. 79 of 1983 and thereafter it was transferred to Sub Court, Poonamallee and re-numbered as O.S. No. 321 of 1984. The said suit in O.S. No. 79 of 1983 was decreed exparte and thereafter, the same was set aside. In the said suit, the balance amount was deposited but not deposited before the Court where the decree has been passed. Therefore, the petitioners filed petition under Section 28 of the Specific Relief Act, 1963 to rescind the contract. But the Execution Court, without considering that the balance amount was not deposited, in this case, after obtaining decree, erroneously dismissed the application. Therefore, the order passed by the Execution Court is liable to be set aside.



6. The learned counsel appearing for the respondent would contend that already the respondent being the decree holder after obtaining decree in O.S. No. 79 of 1983 deposited the balance of sale consideration before the Sub Court, Chengalpattu and the petitioners also very well knowledge about the same. However, they filed application stating that the respondent has not paid the balance of sale consideration and thereby, filed petition to rescind the sale agreement. Therefore, the Execution Court correctly dismissed the petition. Therefore, the present Civil Revision Petition is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. In this case, there is no dispute that the respondent has got decree for specific performance of contract and the original suit filed was attained finality before the Hon'ble Supreme Court of India in S.L.P. Nos. 14165 and 14166 of 2016 and thereafter, the respondent filed Execution Petition. In the said Execution Petition, the petitioners filed application to rescind the sale agreement on the ground that the respondent has not deposited the sale consideration after the decree passed by the concerned Court.

9. In this context, it is an admitted fact that initially the suit was filed



WEB COPY

before the Sub Court, Chengalpattu in O.S. No. 79 of 1983 and the same was later transferred to Sub Court, Poonamallee and re-numbered as O.S. No. 321 of 1984. The suit while pending before the Sub Court, Chengalpattu was decreed exparte and thereafter, the respondent deposited the balance of sale consideration on 17.12.1983 before the Sub Court, Chengalpattu. Thereafter, the exparte decree was set aside and after transfer of the suit before the Sub Court, Poonamallee, the decree was passed on 30.08.1996. According to the respondent, once the exparte decree was set aside, the earlier deposit amount cannot be taken into account and the respondent ought to have deposited the amount in O.S. No. 321 of 1984 before the Sub Court, Poonamallee. There is no dispute that already the balance of sale consideration was deposited before the Sub Court, Chengalpattu and thereafter the case was transferred to Sub Court, Poonamallee. Since, the amount was deposited in the Competent Court after transfer of the above said case, it is the duty of the Court to transfer all the papers pertaining to that suit. Therefore, the deposit amount in the previous Court, cannot a ground to rescind the contract as per Section 28 of the Specific Relief Act, 1963. Since, amount was already deposited before the Competent Court, arguments of the counsel for the appellant that the balance amount was not deposited into the Court is not acceptable. The Execution Court, in this context, after elaborate discussion, held that the amount of Rs. 30,000/- has been received in the present E.P. No. 57 of 2014 and therefore,



the stand taken by the petitioner that when exparte decree is set aside all proceedings in pursuance of the exparte decree stands nullified, cannot be sustained in respect of the balance sale consideration that was deposited into Court in O.S. No. 79 of 1983.

10. Further, the learned counsel appearing for the petitioners also would contend that the value of the property is more than 9 Crores and the balance amount deposited only accumulated for a sum of Rs. 4,70,516/-. Therefore, the respondent could take unfair advantage than the petitioners. The case is at the stage of execution and at this stage, the petitioners cannot raise such a ground. Therefore, the contention of the learned counsel appearing for the petitioners is not acceptable. Therefore, the petitioners are not entitled to any relief. The Execution Court has passed a reasoned order and it does not warrant any interference.

11. In view of the aforesaid discussions, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.07.2024



C.R.P. No. 4349 of 2022

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

WEB COPY

To

The Subordinate Court, Poonamallee.



WEB COPY



C.R.P. No. 4349 of 2022

P.DHANABAL, J.,

pal

C.R.P. No. 4349 of 2022

25.07.2024