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CRP.No.5076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2024

PRONOUNCED ON : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.5076 of 2023

and

CMP.No.29494 of 2023

V.Raghuraman ... Petitioner
vs.

1.N.Sankaralingam
Kalianna Gounder (died)
Vangalayee (died)

2.Palanisamy

3.Suresh Babu

4.Thangammal

5.Pappu

6.Manimegalai ... Respondents

(Cause title accepted vide Court
order dated 11.12.2023 made
in CMP.No.27892 of 2023
in CRP Sr.No.153151/2023)

PRAYER : This civil revision petition has been filed under Article 227 of the Constitution of India to strike off the civil miscellaneous appeal in C.M.A.No.44 of 2022 on the file of the Principal District Court, Salem.

For Petitioner ... Mr.M.Guruprasad
For Respondent ... Mr.D.Baskar
No.1



CRP.No.5076 of 2023

ORDER

This civil revision petition has been filed to strike off the civil miscellaneous appeal in C.M.A.No.44 of 2022 on the file of the Principal District Court, Salem.

2.The fact of the case is as follows:

(i).The petitioner filed the suit in O.S.No.926 of 1994 before the Subordinate Court, Salem, seeking the relief of specific performance as against the defendants therein based upon the registered sale agreement dated 15.10.1993. Later, the suit was transferred and renumbered as O.S.No.366 of 1997 on the file of the Subordinate Court, Attur. The 1st and 3rd respondents herein are the purchasers of the suit scheduled property from the original owners, who claimed that they have purchased the property on 16.11.1994. The summons were served to the landowners and them. Though all of them have been served with summons, none of them contested the case and the suit was decreed on 06.04.1999. Further, the trial Court was pleased to execute the sale deed in favour of the petitioner on 22.02.2000 vide document No.190 of 2000 before the Sub-Registrar, Thalaivasal.

(ii).Further, the petitioner filed an execution petition in R.E.P.No.19



CRP.No.5076 of 2023

of 2000 under Order 21 Rule 35 CPC on the file of the Sub-Court, Attur.,

in which, the 1st and 3rd respondents herein filed a condone delay petition in

I.A.No.193 of 2001 with the delay of 371 days to set aside the exparte decree dated 06.04.1999 and the same was dismissed on 09.11.2001.

Aggrieved against the order of dismissal, the 1st and 3rd respondents herein preferred CRP No.240 of 2002 before this Court and the same was dismissed on 21.06.2002, against the same, they preferred Civil Appeal before the Hon'ble Apex Court in Civil Appeal No.9848 of 2003 and the same was also dismissed on 17.08.2010 confirming the orders of the Courts below.

(iii).The 1st and 3rd respondents herein, after losing the case up to Hon'ble Apex Court, had filed an Interlocutory application in REA.No.6 of 2002 under Section 47 CPC in the execution proceedings. Pending the proceedings in REA.No.6 of 2002, Kalianna Gounder/1st defendant and his wife Vangalayee/2nd defendant in the suit died on 16.07.2008 and 17.07.2009 respectively. Thereafter, the 1st respondent herein/4th defendant filed an Interlocutory Application in I.A.No.136 of 2014 to bring the legal



CRP.No.5076 of 2023

heirs of the deceased 1st and 2nd defendants as their legal heirs namely Thangammal, Pappu and Manimegalai and the same was allowed 12.12.2014. Thereafter, the amendment was effected and the legal heirs were impleaded in REA No.06 of 2002, thereafter, the petitioner preferred the civil revision petition in CRP(NPD) No.294 of 2015 to strike off the REA No.06 of 2002 before this Court and the same was allowed on 27.08.2018.

(iv).Further, the execution petition in REP No.19 of 2000 under Order 21 Rule 11 r/w 35 CPC was allowed on 08.11.2021 and the delivery was recorded on 12.10.2022 and the Execution Petition was closed on 15.10.2022.

(v).Immediately, the 1st respondent herein filed an interlocutory application in unnumbered EA No.... of 2021 under Order 21 Rule 97 CPC in REP No.19 of 2000 in O.S.No.366 of 1997 and the same was rejected by the trial Court on 08.11.2021. Aggrieved against the same, the 1st respondent herein preferred CMA No.44 of 2022 before the Principal



CRP.No.5076 of 2023

District Court, Salem, in which, he has also filed stay petition in I.A.No.1 of 2022 and I.A.No.2 of 2022 to implead the proposed legal representatives of the deceased Kalianna Gounder and Vangalayee as their legal heirs namely Thangammal, Pappu and Manimegalai as respondents 6 to 8 and I.A.No.3 of 2022 to implead them in the stay petition that applications were allowed by the Lower Appellate Court, against the CMA, the present civil revision petition has been filed to strike of the same.

3.The learned counsel appearing for the petitioner submitted that the first respondent is the 4th defendant in O.S.No.366 of 1997 and the suit was decreed, which was confirmed by the Apex Court in Civil Appeal No.9848 of 2003 on 17.08.2010. The petitioner filed the execution petition in REP.No.19/2000 on the file of the Sub Court, Attur, in which, the 1st and 3rd respondents herein filed a condone delay petition in I.A.No.193 of 2001 with the delay of 371 days to set aside exparte decree dated 06.04.1999 and the same was dismissed on 09.11.2001. Aggrieved against the order of dismissal, the 1st and 3rd respondents herein preferred CRP No.240 of 2002 before this Court and the same was dismissed on 21.06.2002 against the



CRP.No.5076 of 2023

same, they preferred Civil Appeal before the Hon'ble Apex Court in Civil Appeal No.(s).9848 of 2003 and the same was also dismissed on 17.08.2010 confirming the orders of the Courts below. The 1st and 3rd respondents herein, after losing the case up to Hon'ble Apex Court, had filed an Interlocutory application in REA.No.6 of 2002 under Section 47 CPC in execution proceedings. Pending proceedings in REA.No.6 of 2002, Kalianna Gounder/1st defendant and his wife Vangalayee/2nd defendant in the suit died on 16.07.2008 and 17.07.2009 respectively. Therefore, the 1st respondent herein/4th defendant filed an Interlocutory Application in I.A.No.136 of 2014 to bring the legal heirs of the deceased 1st and 2nd defendants namely Kalianna Gounder and Vangalayee as their legal heirs namely Thangammal, Pappu and Manimegalai and the same was allowed 12.12.2014. Thereafter, the amendment was effected and the legal heirs were impleaded in REA No.06 of 2002, thereafter, the petitioner preferred the civil revision petition in CRP(NPD) No.294 of 2015 to strike off the REA No.06 of 2002 before this Court and the same was allowed on 27.08.2018.

4.The learned counsel further contended that the claim petitioner



CRP.No.5076 of 2023

being a Judgment debtor is bound by decree, not competent to file execution petition under Order 21 Rule 97 CPC, therefore, the petition in unnumbered E.A.No.....2021 in REP No.19 of 2000 in O.S.No.366 of 1997 was dismissed by the Executing Court on 08.11.2021, against which, CMA No.44 of 2022 was filed. The unethical action of the Judgment Debtor by filing obstruction petition will prevent decree holder enjoying the decree, therefore, the power of superintendence of this Court has to be exercised in this case seeking to strike of CMA No.44 of 2000 on the file of the Principal District Court, Salem.

5.To support of his argument, the learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of ***Thirugnanasambandam Vs. Sundaramurthy Chettiar & others*** reported in 2014-3-L.W.918 and ***Pramod Kumar Vs. U.P.Secondary Education Services Commission and Others*** reported in (2008) 7 Supreme Court Cases 153.

6.The learned counsel appearing for the first respondent resisted the



CRP.No.5076 of 2023

civil revision petition on the ground that Power of judicial superintendence under Article 227 must be exercised sparingly only to keep the Courts and tribunals within their bounds of authority and not to correct mere errors where the law provides remedy by filing an appeal or revision, then exercise of power under Article 227 may be refused, on the ground of availability of such alternative efficacious remedy by way of appeal or revision to the aggrieved party. Therefore, CMA No.44 of 2022 could not be struck off by exercising power under Article 227 of this Court and thus, pleaded to dismiss the civil revision petition as it has no merit. To support his argument, the learned counsel appearing for the first respondent relied upon the following judgments:

**1.K.Ponnamal & Others Vs. V.Thayanban
& Others reported in 2012 2 LW 193**

**2.Brahmdeo Choudhary Vs. Rishikesh
Prasad Jaiswal and Another reported in 1997 0
Supreme (Raj) 88.**

**3.Mohd.Yunus Vs. Mohd.Mustaqum and
others reported in 1983 4 SCC 566.**

**4.A.Venkatasubbiah Naidu
Vs.S.Challappan & Ors. reported in 2000 0 AIR**



CRP.No.5076 of 2023

(SC) 3032.

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7.I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on record.

8.On perusal of the material fact, the following facts are not disputed.

(i).The petitioner filed the suit in O.S.No.926 of 1994 before the Sub Court, Salem, seeking the relief of specific performance as against the defendants therein based upon the registered sale agreement dated 15.10.1993. Later, it was transferred and renumbered as O.S.No.366 of 1997 on the file of the Subordinate Court, Attur.

(ii).The first respondent (Appellant in CMA No.44 of 2022 on the file of the Principal District Court, Salem) is the 4th defendant in the said suit.

(iii).The suit was decreed on 06.04.1999 and it was confirmed by the Hon'ble Apex Court on 17.08.2010 in the Civil Appeal No.9848 of 2003



CRP.No.5076 of 2023

preferred by the first respondent (4th defendant in the suit).

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(iv).The petitioner filed an Execution Petition in REP No.19 of 2000 on the file of the Sub Court, Attur.

(v).The first and third respondents filed an application in REA No.6 of 2002 under Section 47 CPC in the execution proceedings. Thereafter, the petitioner filed CRP (NPD) No.294 of 2015 to strike off the application in R.E.A.No.6 of 2002 in R.E.P.No.19 of 2000 that was ordered by this Court dated 27.08.2018.

(vi).Further, the execution petition in REP No.19 of 2000 was allowed on 08.11.2021, delivery was recorded on 12.10.2022 and the execution petition was closed on 15.10.2022.

(vii).At this stage, the first respondent herein filed an application in unnumbered EA No.. . . .of 2021 in R.E.P.No.19 of 2000 in O.S.No.366 of 1997 under Order 21 Rule 97 CPC, which was rejected by the learned trial



CRP.No.5076 of 2023

Judge on 08.11.2021, aggrieved by that order, the impugned CMA No.44 of 2022 is filed on the file of the Principal District Court, Salem.

9.In the factual background, the first respondent (4th defendant in the suit in O.S.No.366 of 1997) filed an obstruction application in unnumbered E.A.No. /2021 in R.E.P.No.19 of 2000 in O.S.No.366 of 1997 Order 21 Rule 97 CPC. For better appreciation, Order 21 Rule 97 CPC reads as follows:

“97. Resistance or obstruction to possession of immovable property.- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance



CRP.No.5076 of 2023

with the provisions herein contained

and the Hon'ble Supreme Court in the case of ***Brahmdeo Choudhary***

Vs. Rishikesh Prasad Jaiswal and Another reported in 1997 2 RLW

(Raj) 256 observed as follows:

“A reading of Order 21, Rule 97 CPC clearly envisages that “ any person even including the judgment -debtor irrespective whether he claims derivative title from the judgment -debtor or set up his own right, title or interest dehors the judgment debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree holder to make an application for removal of the obstruction or resistance by such person.”

Therefore, the judgment of this Court relied on by the learned counsel appearing for the petitioner in ***Thirugnanasambandam Vs.***



CRP.No.5076 of 2023

Sundaramurthy Chettiar & others reported in ***2014-3-L.W.918*** cannot be taken into consideration.

10.The first respondent is bound by the decree which is confirmed by the Apex Court. Further, the material on record shows that the obstruction petition filed under Section 47 by the respondents/defendants in the suit has also struck off by this Court in CRP.No.294 of 2015. Under these circumstances, again the respondents filed another application under Section 21 Rule 97 CPC is misusing the process and it is a fit case to strike off the CMA No.44 of 2022 filed against the dismissal of unnumbered E.A.No.of 2021 in R.E.P.No.19 of 2020 in O.S.No.366 of 1997.

11.The Judgement relied upon by the learned counsel appearing for the first respondent in 1.***K.Ponnamal & Others Vs. V.Thayanban & Others reported in 2012 2 LW 193,*** 2.***Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal and Another reported in 1997 0 Supreme (Raj) 88,*** 3.***Mohd.Yunus Vs. Mohd.Mustaqum and others reported in 1983 4 SCC 566*** and 4. ***A.Venkatasubbiah Naidu Vs.S.Challappan &***



CRP.No.5076 of 2023

Ors. reported in 2000 0 AIR (SC) 3032 are found to be not helpful to the first respondent's case.

In the result, the civil revision petition is allowed and CMA No.44 of 2022 on the file of the Principal District Court, Salem, is struck off. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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26.02.2024

To
The Principal District Court, Salem.



WEB COPY



CRP.No.5076 of 2023

V.SIVAGNANAM ,J.

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CRP.No.5076 of 2023
and
CMP.No.29494 of 2023

26.02.2024



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CRP.No.5076 of 2023