



C.R.P(MD)No.428 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.428 of 2010

and

M.P(MD)No.1 of 2010

in

C.R.P(MD)No.330 of 2005

C.R.P(MD)No.428 of 2010:

1.D.Kalidass (Died)

2.K.Kumar

... Petitioners/Respondents 5 & 6
Defendants 5 & 6

3.Janakiammal

4.Vijayalakshmi

5.Manikanda Prabu

6.Vani Devi

7.Saravana Babu

... Petitioners

*(Petitioners 3 to 7 are brought on record
and second petitioner already on record,
recorded as legal heirs of deceased first
petitioner vide order, dated 22.06.2016
made in M.P(MD)No.1 of 2013 in
C.R.P(MD)No.428 of 2010)*

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C.R.P(MD)No.428 of 2010

Vs.

1.Periyasamy Nadar (Died)

2.Ramakrishna Pillai

3.Pitchaiah

4.Poongodi

5.Chellammal

6.Suseela Raman

7.Kumarasamy

... Respondents 2 to 7/
Respondents 1 to 4, 7 & 8/
Defendants 1 to 4, 7 & 8

(Respondents 2 to 7 were set ex parte in the Lower Court itself and hence they may be dispensed with)

8.Prabhu

... 8th Respondent

(Respondent 8 is brought on record and fifth respondent already on record, recorded as legal heirs of deceased first respondent vide Court order, dated 09.03.2020 made in C.M.P(MD)No.6110 of 2016 in C.R.P(MD)No.428 of 2010)

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order passed in E.P.No.242 of 2006 in O.S.No.34 of 1999 on the file of the Principal Subordinate Judge, Tirunelveli, dated 19.01.2010.

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For Petitioners : Mr.M.P.Senthil
R-1 : Died
R-2 to R-7 : *Ex parte*
For R-8 : Mr.David Ganesan
for Mr.J.Ashok

M.P(MD)No.1 of 2010
in
C.R.P(MD)No.330 of 2005:

1.Kalidass (Died)

2.K.Kumar

3.Janakiammal

4.Vijayalakshmi

5.Manikanda Prabhu

6.Vanidevi

7.Saravana Babu

... Petitioners

(Petitioners 3 to 7 are brought on record as legal heirs of deceased first petitioner vide Court order, dated 07.06.2019 made in M.P(MD)No.1 of 2013 in C.R.P(MD)No.330 of 2005)

Vs.

1.Periyasamy Nadar (Died)

2.Chellammal

3.P.Prabhu

... Respondents

(Respondents 2 & 3 are brought on record as



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legal heirs of deceased sole respondent vide Court order, dated 07.06.2019 made in C.M.P(MD)Nos. 6107 to 6109 of 2016 in C.R.P(MD)No.330 of 2005)

PRAYER : Miscellaneous Petition is filed under Section 151 of the Code of Civil Procedure and under Article 227 of Constitution of India, to direct the respondent herein to comply the order of this Court, dated 07.10.2005 in C.R.P(MD)No.330 of 2005 forthwith in accordance with the memo of compromise, dated 06.10.2005 annexed along with order in C.R.P(MD)No.330 of 2005.

For Petitioners : Mr.M.P.Senthil

For R-3 : Mr.David Ganesan
for Mr.J.Ashok

COMMON ORDER

One Ramakrishna Pillai and his son Pitchaiah and daughter Poongodi are the original owners of the suit schedule property. They have mortgaged the said property in favour of one Periyasamy Nadar by way of a registered document, dated 16.10.1986. The revision petitioners herein had purchased the property from the said Ramakrishna Pillai and his children by way of a registered sale deed, dated 18.12.1988. The



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original owners for reasons best known to them have cancelled the sale deed which was executed in favour of the revision petitioners. The revision petitioners have filed O.S.No.619 of 1994 to declare the cancellation of the sale deed as null and void. The said suit was decreed on 01.08.1997 and the same has attained finality.

2. The mortgagees under the mortgage deed, dated 16.10.1986 had filed O.S.No.34 of 1999 before the I Additional Sub Court, Tirunelveli for recovery of money and an *ex parte* preliminary decree came to be passed on 22.07.1999. In the said suit, the revision petitioners were also parties. A final decree came to be passed on 27.11.2001 in I.A.No.51 of 2000. Thereafter, the revision petitioners herein had filed I.A.No.369 of 2003 for condoning the delay of 1420 days in filing an application to set aside the *ex parte* decree. This application was dismissed by the Executing Court on 19.07.2004. Challenging the said order, C.R.P(MD)No.330 of 2005 was filed before this Court.



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3. Pending revision petition, since the interim orders were not extended, the final decree obtained in a mortgage suit was put to execution. With the permission of the Court, the mortgagee himself has purchased the suit schedule property. The sale was confirmed and a sale certificate was also issued in favour of the mortgagee.

4. Pending revision petition, the revision petitioners and the mortgagee had entered into a compromise, wherein, the revision petitioners have agreed to deposit the mortgage money of Rs.1,65,300/-. They have also paid the said amount to the mortgagee. Thereafter, the mortgagee had agreed to execute a sale deed in favour of the revision petitioners. This compromise was recorded by this Court on 07.10.2005. In the said compromise, the mortgagee has admitted that on execution of the sale deed, they or their legal heirs would not claim any title or possession over the suit schedule properties. Time limit of six weeks was fixed for execution of the said sale deed. Recording the terms of compromise, C.R.P(MD)No.330 of 2005 was disposed off on



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07.10.2005.

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5. Alleging that within six weeks the revision petitioners have not come forward to get a sale deed executed, the mortgagee had filed E.P.No.242 of 2006 seeking delivery of the property. The revision petitioners have filed E.P.No.243 of 2006 to execute the compromise decree, which was recorded on 07.10.2005 in C.R.P(MD)No.330 of 2005. For reasons best known, the revision petitioners have chosen to withdraw their E.P.No.243 of 2006 on the ground that, they would pursue their remedy before this Court, in which a compromise was recorded.

6. The Trial Court proceeded to allow E.P.No.242 of 2006 and granted an order of delivery. This order of delivery is under challenge in C.R.P(MD)No.428 of 2010.

7. According to the learned Counsel appearing for the revision petitioners in both these revision petitions, it was submitted by the



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mortgagees that, since a compromise has been recorded only before this Court, on 07.10.2005, the revision petitioners have to approach only this Court and E.P petition is not maintainable. Only based upon the submission, the said execution petition was withdrawn. The mortgagees, who have aggrieved before this Court that on execution of the sale deed, they will not claim any title over the property, cannot now turn around and filed an execution petition for taking delivery of the property. He further contended that no further part has to be played by the revision petitioners in execution of the sale deed. There was some dispute with regard to the extent of the property, which was mentioned in the compromise memo and it could be seen from the records, that there was exchange of notice between the revision petitioners herein and the mortgagees with regard to the extent of the property, that is sought to be conveyed on receipt of Rs.1,65,000/-. Taking advantage of this dispute, the delivery application has been filed and the same has also been allowed.



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8. The learned Counsel appearing for the respondents herein had relied upon the judgment of the Hon'ble Supreme Court reported in **2003 (10) SCC 189 [Latim Lifestyle & Resorts Limited and Another Vs. Saj Hotels Private Limited and Others]**, has contended that when the obligations of the parties arising out of a compromise decree, they are not reciprocal but they are independent, they have to be performed independent each party must perform its own obligations directed towards fulfilment and consequent discharge and satisfaction of the decree.

9. In the present case, the revision petitioners herein have not approached the mortgagees for execution of the sale deed, despite the fact a notice was issued by the mortgagees to the said effect. In fact, the revision petitioners have even attempted to reject the said request on the ground that, the extent is not properly mentioned. Therefore, the Executing Court was right in allowing E.P.No.242 of 2006 and ordering delivery of the property. Hence, he prayed for sustaining the order passed by the Trial Court.

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10. I have carefully considered the submissions made on either side and perused the materials available on record.

11. The trajectory of events narrated above will clearly disclose that the right of the present revision petitioners arise out of a compromise decree passed by this Court on 07.10.2005 in C.R.P(MD)No.330 of 2005. Therefore, the request of the petitioners to set aside the *ex parte* preliminary decree, dated 22.07.1999 after a delay of 1420 days is not necessary for adjudication of this dispute. The Trial Court had rightly rejected the said request.

12. The present application in the said M.P(MD)No.1 of 2010 in C.R.P(MD)No.330 of 2005 has been filed to direct the respondents to comply with the orders of this Court, dated 07.10.2005. In other words, an execution petition has been presented before this Court relying upon the compromise recorded by this Court. I am of the opinion that, the compromise recorded before this Court will not confer any right upon the



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revision petitioners to seek execution of the said compromise decree before this Court. They have to approach only the competent Execution Court. With the said liberty, M.P(MD)No.1 of 2010 in C.R.P(MD)No. 330 of 2005 stands closed.

13. The Executing Court had proceeded to allow E.P.No.242 of 2006 only on the sole ground that, E.P.No.243 of 2006 has already been withdrawn by the revision petitioners. The Court should have considered the fact that whether the right to execute the mortgage decree still persists after the compromise that was entered into on 07.10.2005. The said aspect has not been gone into by the Executing Court. That apart, it is represented on behalf of the revision petitioners that, they would like to file a fresh execution proceeding before the Executing Court to execute the compromise decree, dated 07.10.2005. It is needless to point out that if any fresh execution petition is filed, it is subject to the law of limitation and all other defences that are open to the mortgagees.



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14. The order passed in E.P.No.242 of 2006 is set aside. The matter is remitted back to the file of the Executing Court. The Executing Court is directed to consider the said E.P in the light of the compromise that was entered into between the parties on 07.10.2005 in C.R.P(MD)No.330 of 2005. In case if any other Execution petition is filed by the revision petitioners and if the Trial Court finds it to be within the period of limitation, both the execution petitions may be tagged together and decided on merits and in accordance with law without being influenced by anyone of the observations made by this Court.

15. In the result, C.R.P(MD)No.428 of 2010 stands allowed and remitted back to the execution Court for fresh adjudication in the light of the above said observations. There shall be no order as to costs.

22.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

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To

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- 1.The I Additional District Munsif Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.428 of 2010

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