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CRP(NPD) No.773 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.07.2025

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (NPD) No.773 of 2020 and CMP No.4114 of 2020

- 1.Sajan Antony Mathew
- 2.Biby Antony
- 3.S.Iyappan
- 4.R.Dharanipathy
- 5.D.Dhanalakshmi
- 6.Sajja Charumathi
- 7.Sajja Saikumar
- 8.Sajja Lalithamma

... Petitioners

..Vs.

- 1.K.Nalliappan
- 2.T.D.Lakshminarayanan

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.02.2020 made in E.P No.48 of 2018 in O.S No.174 of 2009 on the file of the Subordinate Judge, Poonamallee.

For Petitioners : Mr.T.N.Rajagopalan
for Mr.S.S.Sai Sathyajith
For Respondents : Mr.A.Jinasenan for R1



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ORDER

Challenge has been made to the order of the Executing Court ordering the delivery of the property after demolishing the building constructed by the petitioner.

2. Brief background of the case is as follows:

Originally, a vacant site was allotted to the 2nd respondent by the Tamil Nadu Housing Board in the year 1992. The 2nd respondent had executed a sale agreement dated 08.09.1994 in favour of the 1st respondent for sale of the property for a total sale consideration of Rs.2,00,000/- and received Rs.1,10,000/- as advance. Thereafter, the 2nd respondent had returned back the said advance amount to the 1st respondent on 16.08.1995. Thereafter, a suit came to be filed by the 2nd respondent for the relief of specific performance before the City Civil Court, Chennai on 17.08.1998. That suit was taken back by the plaintiff/2nd respondent for proper presentation before the Court of the original jurisdiction. Permission for return of the plaint was sought on 11.02.1999. Thereafter, on 04.03.1999, the suit has been presented before the Sub Court, Poonamallee. On 12.10.2000, the suit was returned for rectification of certain defects. However, the suit was not represented immediately and it was represented only in the year 2008, by filing an



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application in I.A No.398 of 2008 to condone the delay in representation of the plaintiff. In the meanwhile, the 2nd respondent, who is the original owner had entered into a joint venture agreement with one M/s.AGP Homes on 05.12.2003. Pursuant to the said construction agreement, the petitioners had purchased the constructed flats by way of registered sale deeds on 26.02.2004, 29.04.2004, 02.09.2004 and 09.09.2004. In the year 2009, the suit filed by the 1st respondent was numbered as O.S.No.174 of 2009 and an exparte decree came to be passed on 02.06.2010. Thereafter, the 1st respondent has also informed the revision petitioners about the exparte decree on 21.10.2010. Thereafter, the petitioners appeared to have filed C.R.P S.R No.37468 of 2011. However, since the senior counsel who handled the matter died, the said civil revision petition has not been followed.

3. Be that as it may, the petitioners once again filed C.R.P SR No.72535 of 2013 to set aside the exparte decree on the ground that it did not contain any reasons and not conformity with Order XX Rule 3 and 4 CPC. However, the said civil revision petition has been disposed of on 02.11.2016 enabling the petitioners to file an appropriate application before the trial Court for getting himself impleaded and for



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setting aside the exparte decree. Pursuant to the said order of this Court,

the revision petitioners had filed three applications in I.A Nos.206 to 208 of 2016 and other two unnumbered applications viz., i) I.A No.206 of 2016 was filed to permit the power of attorney holder to file the applications on behalf of the revision petitioners, ii) I.A No.207 of 2016 was filed to grant leave to file an application for impleadment, iii) I.A No.208 of 2016 was filed to permit the petitioners to be impleaded, iv) unnumbered I.A No../2016 was filed to grant leave to file an application to set aside the judgment and decree and v) unnumbered I.A No. /2016 was filed to set aside the and judgment and decree. It appears that the applications filed to grant leave to set aside the decree and judgment and also to set aside the decree and judgment were also not numbered and kept as unnumbered I.As. Only three applications were numbered.

4. Be that it may, originally those applications have been filed before the Sub Court, Poonamallee in the year 2016 itself. In the meanwhile, the execution petition in E.P No.48 of 2018 has also been filed before the Sub Court, Poonamallee by the decree-holder, namely the 1st respondent herein and the same has been transferred to the newly constituted Sub Court at Ambattur and renumbered as E.P No.745 of

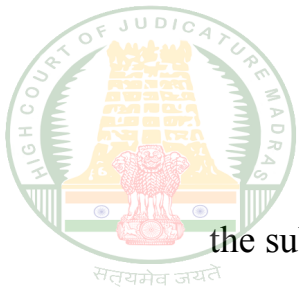


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2023. However, the applications filed by the revision petitioners as indicated above, had not been decided by the original Court, namely Sub Court, Poonamallee itself. Now, it appears that all the applications have been transferred to the Sub Court, Ambattur as per the official memorandum of the Principal District and Sessions Judge, Tiruvallur in D.No.6626/SJ/2022 dated 11.11.2022. Despite these applications have been transferred from the Sub Court, Poonamallee, no new number has been assigned before the Sub Court, Ambattur and the said applications have been just kept pending. In the meanwhile, in E.P No.48 of 2018 filed by the decree-holder, an order has been passed by the Subordinate Court, Poonamallee on 14.02.2020, directing the respondents to remove the buildings and hand over vacant possession and delivery was also ordered.

5. In such view of the matter, taking note of the facts narrated above and though the suit was originally filed in the year 1998 and the same was returned in the year 2000 for presentation before the proper Court and it was represented only in the year 2008 and in the meanwhile, the property has been transferred to the third party and the third party right was also created, this Court is of the view that whether



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the subsequent purchaser is a bonafide purchaser for value without notice

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to the agreement has to be necessarily decided in the suit.

6. In such view of the matter, the revision petitioners having already filed the applications seeking leave to participate in the proceedings, now those applications have been transferred from the Sub Court, Poonamallee to the Sub Court, Ambattur, there shall be a direction to the Sub Court, Ambattur, to assign new number to I.A Nos.206 to 208 of 2016 and other two unnumbered I.A Nos./2016 transferred from Sub Court, Poonamallee and dispose of the said applications on merits, within a period of two months from the date of receipt of a copy of this order. Till such time, the order of the trial Court/Executing Court shall be kept in abeyance.

7. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

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Index:Yes/No
Internet:Yes/No
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To

1.The Subordinate Judge,
Poonamallee.

2.The Subordinate Judge
Ambattur.



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N.SATHISH KUMAR,J
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and
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