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CRP No. 5026 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 5026 of 2023

1. B. Vasanthi

D/o. Late Belli Gowder, Aravenue,
Kothagiri Taluk, Nilgiri District.

2. Anandhi

W/o. Kalaiselvan at shakthi Nagar,
Veerapandi, Coimbatore-641 047.

Petitioners

Vs

1. N. Purushothaman

S/o. Late P.Narayanasamy, Karamadai,
Mettupalayam Taluk, Coibatore.

2.B.R.Mohan Kumar

S/o. D.Rangasamy, D.No.7/222, Periya
Ranganathapuram, Bujankanur, Post,
Kallampalayam Village, Mettupalayam
Taluk, Coimbatore. B.Belligowder
(Deceased)

3.B.Balakrishnan

S/o. Late Belligowder, D.No.14/142,
Aravenu, Kothagiri, S.A
Shanmugham(Deceased))
S.A.Saravanan (Deceased)



4.S.A.Leelakrishnan

S/o. Ayyaswamy, No.13/12-B, Diwan
Bhagadur Road, R.S. Puram,
Coimbatore-641 002.

5.S.Krishnaveni

W/o. S.A.Saravanan, No.13/121B,
Diwan Bhagadur Road, R.S.Puram.
Coimbatore-641 002.

6.S.Manojkumar

S/o. S.A.Saravanan, No.13/121B,
Diwan Bhagadur Road, R.S.Puram.
Coimbatore-641 002.

7.S.Krithika

D/o. S.A.Saravanan, No.13/121B,
Diwan Bhagadur Road, R.S.Puram.
Coimbatore-641 002.

8.B.Manoharah

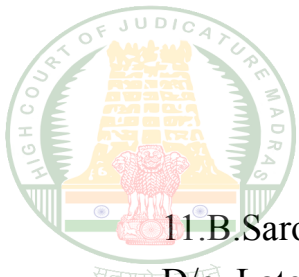
S/o. Late Belligowder, No.14/142,
Sakkattha, Kotagiri Taluk, Nilgiri
District.

9.B.Jayakumar

S/o. Late Belligowder, No.14/143,
Sakkattha, Kotagiri Taluk, Nilgiri
District.

10.B.Mahesh

S/o. Late Belligowder, No.14/142,
Sakkattha, Kotagiri Taluk, Nilgiri
District.



11.B.Saroja

D/o. Late Belligowder, No.14/142,
Sakkattha, Kotagiri Taluk, Nilgiri
District.

12.Nirmala

W/o. S.A Shanmugam, D.No.305, TV
Road, R.S. Puram, Coimbatore.

13.Suganya

D/o. S.A Shanmugam, D.No.305, TV
Road, R.S. Puram, Coimbatore.

14.Nithya

D/o. S.A Shanmugam, D.No.305, TV
Road, R.S. Puram, Coimbatore.

Respondents

PRAYER This Civil Revision Petition is filed under Section 115 of Civil Procedure Code praying to set aside the fair and decreetal order passed in EA.No.452/2008 in EP.No.9/2011 on the file of Honourable IInd Additional Subordinate Judge Coimbatore.

For Petitioners: M/s.Dinuprashanth

For Respondents: Mr.N. Manokaran

ORDER

The decree holders, who are claiming under one Belli Gowder, the 4th plaintiff in a suit for specific performance, are the revision petitioners,



challenging the order of the Execution Court, allowing the application under

Section 47 of the Code of Civil Procedure and consequently dismissing the

execution petition

2. Heard the learned counsels for parties.

3. According to the learned counsel for the petitioner, Belli Gowder was the 4th plaintiff in the suit and the suit came to be decreed on 2nd September 1985, against which an appeal was also preferred before this Court in A.S. No. 736 of 1986, and the Hon'ble Division Bench, vide judgment dated 18.06.2003, dismissed the appeal preferred at the instance of defendants 2 and 3. According to the learned counsel for the petitioner, the 4th plaintiff's right remained intact, and in order to execute the decree, the 4th decree holder filed the execution petition in E.P. No. 9 of 2011. At the stage of execution of the draft sale deed as directed by the Court, an application was taken out by the subsequent purchasers, who sought dismissal of the execution petition as one not being executable, invoking the provisions of Section 47 of the Code of Civil Procedure.



4. The Executing Court, upon enquiry, found that the decree holders have no subsisting interest in the subject property or the decree, and accordingly proceeded to allow the application under Section 47 and dismissed the execution petition. Aggrieved by the same, the present revision petition has been preferred.

5. The learned counsel for the respondent, Mr. N. Manoharan, per contra states that subsequent to the decree passed by the Trial Court in O.S. No. 11 of 1983 dated 02.09.1985 and the dismissal of A.S. No. 736 of 1986, the plaintiffs 1 to 3, along with defendants 1 to 3, executed a registered General Power of Attorney, based on which the property was conveyed to respondents 1 and 2 herein through two registered sale deeds. It is further contended that the property was subsequently plotted out and a gift deed was also executed in favour of the Panchayat and plots have been sold. As on date, the respondents 1 and 2 have no subsisting interest in the suit property. He would further state that the present execution is only an attempt to blackmail respondents 1 and 2 to make some quite money in the process.



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6. I have carefully considered the submissions advanced by the learned counsel on either side and also gone through the order of the Executing Court allowing the Section 47 application and consequently dismissing the execution petition.

7. In the suit in O.S. No. 11 of 1983 filed before the Sub Court, Coimbatore for specific performance, one of the plaintiffs, who was shown as a minor, was represented by Belli Gowder, who was arrayed as the 4th plaintiff in the said suit. However, though a decree came to be passed, there was no decree against or in favour of the 4th plaintiff, Belli Gowder. Subsequently, the decree was challenged by defendants 2 and 3 alone before the Hon'ble Division Bench of this Court, and by its judgement dated 18.06.2003, the appeal was also dismissed.

8. It is the specific case of respondents 1 and 2 that, subsequent to the dismissal of the first appeal by the Hon'ble Division Bench of this Court, plaintiffs 1 to 3, vide Exs. P1 to P3, executed registered General Powers of



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Attorney in favour of one Jeevanantham. At the same time, defendants 1 to 3 also executed a registered Power of Attorney under Ex.P4 in favour of the same agent, Jeevanantham, who, in turn, conveyed the subject properties to respondents 1 and 2 by way of registered sale deeds marked as Exs. P7 and P8.

9. The sale consideration had also been acknowledged, and documents in this regard are marked as Exs. P5 and P6. The Court has also gone through the decree passed in the suit, as well as the judgment of the Hon'ble Division Bench of this Court, dismissing the appeal. There is no decree in favour of the 4th plaintiff, Belli Gowder. Subsequent to the demise of Belli Gowder, the petitioners, claiming to be his legal heirs, have sought to execute the decree in O.S. No. 11 of 1983. The said execution petition has been filed not only against the judgment debtors, but also against the plaintiffs.

10. Pending the execution petition, the subsequent purchasers, respondents 1 and 2 filed an application under Section 47 of the Code of Civil Procedure, questioning the execution of the decree. The Execution Court, after



elaborately discussing the rival contentions of the parties, found that Belli

Gowder, the 4th plaintiff, did not have a decree in his favour, and therefore, the

same could not be executed before the Execution Court.

11. I have also perused the entire order of the Execution Court.

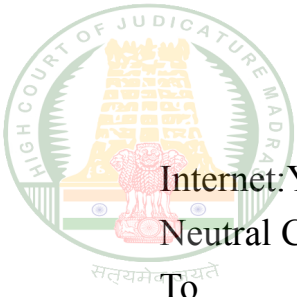
12. It is further seen that all the plaintiffs and defendants, except the 4th plaintiff, had already conveyed their interest through their General Power of Attorney agent, one Jeevanantham, in favour of respondents 1 and 2—by the judgment debtors on 28.07.2009 and by plaintiffs 1 to 3 on 09.04.2010. The property was purchased as early as on 28.04.2010. Therefore, the application under Section 47 was rightly taken out, as the decree cannot be executed at the instance of the legal heirs of Belli Gowder, who had no decree granted in his favour. I do not find any error, perversity, or infirmity in the findings of the Executing Court in allowing the application under Section 47 filed by respondents 1 and 2. There is no merit in the Civil Revision Petition, and it is accordingly dismissed. No costs.

01-07-2025

jrs

Index: Yes/No

Speaking/Non-speaking order



Internet: Yes

Neutral Citation: Yes/No

To

1. The IIInd Additional Subordinate Judge,
Coimbatore.

2.N. Purushothaman

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Mettupalayam Taluk, Coibatore.

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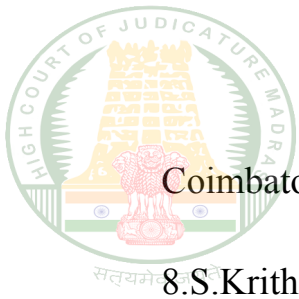
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