
(2007) 02 MAD CK 0074
In the Madras High Court
Case No : C.R.P. (NPD) No. 103 of 1997

Muniammal and Others

APPELLANT

Vs

Behtania Residents Welfare Society

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2007) 3 CTC 725

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M.V.L. Narasimhan, for the Appellant; P.B. Balaji, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This revision is directed against the Order in E.P. No. 87/1993 in O.S. No. 214/1984 [dated 17.09.1996], ordering execution of the Sale Deed in favour of Respondent/Decree-Holder Society.

2. Suit for Specific Performance and Decree passed thereon, had been subject matter of several rounds of litigation for more than two decades. Necessary facts for disposal of this Revision Petition are as follows:

2.1. Revision Petitioners are legal heirs of one Govindasami. The said Govindasami entered into an Agreement of Sale to sell his lands measuring 1.13 acres in S. No. 166/2 situated in Valasaravakkam Village, Saidapet Taluk to Bethania Residents Welfare Society, represented by its President Jayavelu and Secretary Arul Sekar, under the Agreement dated 23.09.1979. Since Govindasami failed to execute the Sale Deed, Society filed a suit in O.S. No. 214/1984 for Specific Performance of Contract of sale on the file of Sub Court, Poonamallee and the same was decreed in favour of the Society on 06.11.1986. The said Govindasami preferred an appeal before the High Court in A.S. No. 374/1987. The appeal was partly allowed. By the Decree dated 16.07.1992, the High Court modified the Decree that the Defendant shall execute and register the Sale

Deed in favour of the members of the Plaintiff Society.

2.2. Purchaser Society was directed to pay the balance sale consideration i.e. Rs. 5,000/- to be deposited into Court and the same was also deposited on 05.12.1987. Since the Revision Petitioners/Judgment-Debtors 2 to 6 have not come forward to execute the Sale Deed, Decree-Holders filed E.P. No. 87/1993 for execution of the Sale Deed. On behalf of the Judgment-Debtors/Defendants, Subordinate Judge, Poonamallee had executed the Sale Deed on 06.12.2000.

3. On 17.09.1986, E.P. No. 87/1993 was ordered, which is challenged in this Revision Petition. Earlier, this CRP was dismissed for default on 04.09.1997. The CRP was restored on 22.08.2003, allowing CMP No. 858/1998 filed for restoration of CRP.

4. Assailing the impugned Order, learned Counsel for the Revision Petitioners raised the following contentions:

The Society which entered into an Agreement on 23.09.1979 was by name Bethania Cooperative House Building Society. It was registered as a Cooperative Society under Tamil Nadu Cooperative Societies Act where as the Plaintiff Society - Bethania Residents Welfare Society is a Society registered under Societies Registration Act on 08.05.1984 and Plaintiff Society is not entitled to claim any right under Agreement dated 23.09.1979;

Pursuant to A.S. No. 374/1987, High Court has directed the Petitioners to execute Sale Deeds in favour of members of the Plaintiff Society as on date of Agreement - Ex.A-1 and since on the date of Ex.A-1, Plaintiff Society was not in existence, now cannot claim any right under the Agreement even according to the modified Decree of High Court;

Pursuant to modification of Decree by the High Court, Revision Petitioners/Judgment-Debtors have executed Sale Deeds in favour of members of Bethania Nagar Cooperative House Building Society and while so, the Court erred in executing the Sale Deed in favour of Plaintiff Society.

5. Though the Plaintiff Society is represented by Mr.P.B.Balaji Advocate, he has submitted that he had no instructions.

6. Dispute between the parties had chequered career and there had been many subsequent developments. I have carefully examined the record and given thoughtful consideration to the contention of the Revision Petitioners. Before we proceed, it is necessary to refer to A.S. No. 374/ 1987 in which the High Court has modified the Decree for specific Performance. The Decree was modified as under -

(1)That clause (2) of the Decree of the Court below be deleted and the following be substituted:

1. That the Defendant shall execute and register the Sale Deed in favour of the members of the Plaintiff society in whole or in parts as on the date of the

Agreement Ex.A-1; and

2. that there be no costs in this appeal.

7. For execution of the Decree, E.P. No. 87/1993 was filed by the Plaintiff Society "to direct Defendants/Judgment-Debtors to execute and register Sale Deed in favour of the Members of the Plaintiff Society in respect of the suit property". A separate list of Members was enclosed along with the Execution Petition. In accordance with the Decree modified by the High Court, the Execution Court had also executed the Sale Deed in favour of "Bethania Residents Welfare Society" represented by its members - (1) T. Murugesan and 36 others [vide Court Sale Deed for list of Members]. Sale Deed was executed in accordance with the modified Decree passed by the High Court.

8. As noticed earlier, main contention of the Revision Petitioners is that the Society which entered into Agreement on 23.09.1979 was a Cooperative Society registered under Tamil Nadu Cooperative Societies Act and the said Society had become defunct and the Plaintiff Society Bethania Residents Welfare Society is a Society registered under Societies Registration Act on 08.05.1984 and the Plaintiff Society is not entitled to claim any right under the Agreement dated 23.09.1979. Raising the same point that Govindasami had no privity of contract with Plaintiff Society, Revision Petitioners/Judgment-Debtors have already filed Petition u/s 47 CPC in E.A. No. 341/1994. In the Section 47 CPC Petition, Petitioners contended that the Decree-Holder Society cannot enforce the Decree against the Petitioners. By Order dated 10.09.1995, the learned Subordinate Judge dismissed the Petition on the ground that the Execution Petition was filed by the Plaintiff Society in accordance with the Decree granted by High Court in the appeal in A.S. No. 374/1987 and since the Petitioners are the Legal Heirs of deceased Judgment-Debtor/Govindasami, they cannot resist execution of the Decree.

9. Challenging the dismissal of Section 47 CPC application, Revision Petitioners filed CRP No. 3485/1995 and the same was also dismissed on 02.01.1996. Only thereafter, Execution Petition was ordered, directing execution of Sale Deed in favour of Plaintiff Society by the impugned Order dated 17.09.1996. As noticed earlier, this CRP No. 103/1997 was dismissed for default on 04.09.1997.

10. Court has executed the Sale Deed in favour of the Plaintiff Society on 06.12.2000. After Sale Deed was executed, delivery was ordered. At the stage when delivery was ordered, Revision Petitioners have filed E.A. No. 54/2002 raising objection regarding maintainability of the suit. That application was dismissed on 28.03.2002, which was challenged in CRP No. 1177/2003. Referring to various proceedings and holding that it is not open to the Petitioners/Judgment-Debtors to raise objection regarding maintainability of the suit itself at the time of ordering delivery of possession of the property, Justice N.V.Balasubramaniam, had dismissed the CRP No. 1177/2003 by Order dated 15.09.2003.

11. Between 19.09.1997 and 2003, Revision Petitioners had not taken any steps to restore this CRP. Though they have filed C.M.P. No. 858/1998 for restoration of CRP, Petitioners have not taken efforts to bring it before the Court. Only on 22.08.2003, Revision Petition was restored and the matter was brought before the Court again.

12. In all the proceedings, Petitioners have raised the same contention that Bethania Cooperative House Building Society was registered under Cooperative Societies Act and had become defunct, whereas the Plaintiff Society was registered under Societies Registration Act only on 08.05.1984 and that Decree passed in favour of Plaintiff Society is inexecutable. The learned Counsel for the Petitioners vehemently contended that the Decree was modified by the High Court to the effect that the Sale Deed should be executed in favour of the Members of the Plaintiff Society, whereas the Sub Court had exercised its discretion wrongly by executing the Sale Deed in favour of the Society and that the impugned Order is vitiated by material irregularity. Petitioners have raised the same contention more than once and the same was negated. In Section 47 CPC Petition - E.A. No. 341/1994, Execution Court has held that the Execution Petition is filed in accordance with the Decree and it had become final. In C.R.P. No. 1177/2003, this Court has observed that the Sale Deed was executed in favour of the members of the Plaintiff Society and the same is in accordance with the Decree passed by the High Court. When the Sale Deed has been rightly executed, it is not open to the Revision Petitioners to raise the same objection.

13. The next contention that the Revision Petitioners Judgment-Debtors themselves have executed the Sale Deeds in favour of the Members of the Society cannot be considered independent of Sale Deed executed by the Court. Stating that the Revision Petitioners are ready to execute the Sale Deed in favour of other members of Society the learned Counsel for the Revision Petitioners prayed to set aside the Sale Deed executed by the Court. It was further submitted that the Petitioners may be directed to execute the Sale Deed in the name of individual members. This submission, though appears to be in accordance with the modified Decree of the High Court, has subtle complexities. The Sale Deed executed by the Court cannot casually be set aside at the instance of the Revision Petitioners who had unsuccessfully resisted the execution of the Decree in various rounds of litigation. If the Sale Deed in favour of the Plaintiff Society executed by the Court is to be set aside, it would supplant various proceedings and what has been already settled and sold in favour of the members by the Society.

14. Names of members of Plaintiff Society was furnished before the Execution Court. Names of all the Members is stated in the Sale Deed also. It is for the society to decide to which of the members the Sale Deed is to be executed. It is not open to the Judgment-Debtors to execute the Sale Deed to Members of their choice dehors the society.

15. The Member and Legal representative of Plaintiff Society had executed a

Power of Attorney in favour of one Kalappan on 30.11.2004. There is also a subsequent litigation between the Plaintiff Society and others in O.S. No. 532/2002 pending on the file of Sub Court, Poonamallee which is hotly contested. If the Court Sale Deed is to be set aside seven years after its execution, that too at the instance of the Judgment-Debtors, who had been unsuccessful in various rounds of litigation, it would only displace the Members of the Society, causing serious prejudice to them.

16. The learned Counsel for the Petitioners has contended that already 37 plots had been laid out on 1.13 acres agreed to be sold on 23.09.1979, and possession had been handed over to the allottees and they have constructed houses and got Property Assessment, Electricity, Drainage connection and pattas were also obtained and they are living there for the past more than two decades. It was further submitted that Revision Petitioners have already executed nearly 13 Sale Deeds in favour of the allottees before the Court Sale Deed and ignoring the same, Execution Court erred in executing the Sale Deed showing the property as 1.13 acres. These aspects were all gone into by the execution Court and the plea was negatived. It is not for the Judgment-Debtors to say as to who are the Members of the society and who are not.

17. The impugned Order dated 17.09.1996 allowing the Execution Petition and ordering execution of Sale Deed does not suffer from any serious infirmity calling for interference. This Revision Petition is devoid of merits and is bound to fail.

18. In the result, the Order in E.P. No. 87/1993 in O.S. No. 214/1984 [dated 17.09.1996] is confirmed and this CRP is dismissed. No costs.