



C.R.P.No.66



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

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CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.No.664 of 1998
and C.M.P.No.3503 of 1998**

G.Chakrapani

... Petitioner

Vs.

1.Jayapal
2.Kunjammal
3.Shanmugham
4.Thangammal
5.Ambujam
6.Indirani
7.Saraswathi
8.Achi Amutha

... Respondents

(Respondents 2 to 8 given up
in the CRP as unnecessary parties)

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C. against the fair and decretal order dated 07.05.1997 in E.A.No.663 of 1993 in E.P.No.697 of 1989 in O.S.No.647 of 1983 on the file of the District Munsif Court, Chidambaram.

For Petitioner : Ms.R.Meenal

For R1 : Mr.Baghawath Krishnan

For R2 to R8 : Given up



ORDER

The revision is filed challenging the fair and decretal order dated 07.05.1997 in E.A.No.663 of 1993 in E.P.No.697 of 1989 in O.S.No.647 of 1983 on the file of the District Munsif Court, Chidambaram.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent. I have carefully gone through the records.

3. O.S.No.647 of 1983 was a suit filed for declaration of title and recovery of possession. The original defendant by name, Govindasamy Padayachi remained exparte. He had filed a written statement claiming benefits under the provisions of the Tamil Nadu Rural Artisans (Conferment of Ownership of Kudiyiruppu) Act, 1976. However, he did not contest the suit, which ended in an exparte decree on 21.06.1988.

4. The judgment debtor filed I.A.No.2283 of 1989 to condone the delay of 473 days to set aside the exparte decree. That application came to be dismissed on 03.01.1992. Challenging the same, he filed C.R.P.No.3317 of 1992 before this Court. The said revision was dismissed on 15.12.1992. The narration of these facts would go to show that the judgment debtor had availed all the remedies to set aside the exparte decree, but had failed.



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5. It is then the second round of litigation commenced. The judgment debtor filed an application in E.A.No.663 of 1993 stating that the decree passed by the Court is a nullity and therefore, incapable of execution.

6. The learned District Munsif, Chidambaram, dismissed the application by way of an order dated 07.05.1997. As already stated, this order has been put in challenge before me in C.R.P.No.664 of 1998.

7. Since the question of jurisdiction was raised in Section 47 of C.P.C., this Court felt that due to the conflicts in judgments, the matter has to be referred to a Division Bench. A reference was made by an order dated 21.07.2003. The question of law made by the reference reads as follows:

“Whether a decree passed by a Civil Court in respect of properties alleged to be Kudiyiruppu, is a nullity or whether the Civil Court has prima facie jurisdiction to pass a decree under the Kudiyiruppu Act.”

8. A Division Bench of this Court answered the reference on 25.03.2021. The answer to the reference is set forth hereunder:

“Question:

Whether a decree passed by a Civil Court in respect of properties alleged to be kudiyiruppu is a nullity or whether the Civil



Court has prima facie jurisdiction to pass a decree under the Kudiyiruppu Act?

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Answers

(i) The question whether an agriculturist or agricultural labourer is in possession of kudiyiruppu has to be necessarily decided under sec.4 of the Act by the Authorised Officer.

(ii) A conjoint reading of sec.4 and sec.23 of the Act indicates that if an agriculturist or agricultural labourer raises a dispute that he is in possession of kudiyiruppu on the relevant date for the purpose of getting kudiyiruppu patta, he has to approach the Authorised Officer concerned for a decision on that point and can not go before a Civil Court.

(iii) The question of jurisdiction of the Civil Court has to be decided on the basis of the averments in the plaint.

(iv) The Civil Court is not barred from considering as to whether one of the parties claiming protection under the Act has any prima facie proof to substantiate his claim or not.

(v) A decree passed by a Civil Court in respect of properties alleged to be kudiyiruppu but without conclusive proof can not be a nullity. Or in other words,

(i) A decree passed by a Civil Court in respect of properties which the defendant alleges that it is a kudiyiruppu and proves to be so, is a nullity.

(ii) A decree passed by a Civil Court in respect of properties which the defendant alleges that it is kudiyiruppu but fails to prove so,



is not a nullity.

(vi) Mere allegation that the property is a kudiyruppu will not take away the jurisdiction of the Civil Court unless it is substantiated. Because no one should be allowed to misuse the statutory provisions and abuse the process of the Courts. Unless the defendant establishes the applicability of the Act, the Civil Court will not lose its jurisdiction.

(vii) If a suit is filed by a Kudiyrupputhar for a relief of declaration of title and Injunction or for recovery of possession on the basis of his valid kudiyruppu patta, the jurisdiction of the Civil Court to entertain it, is not barred.

(viii) The bar under sec.23 of the Act would operate only when a Court ventures to try a suit even after noticing that there is prima facie proof that the defendant is a kudiyrupputhar.

(ix) Civil Court's jurisdiction is not barred to entertain a suit to declare that the decree for declaration and recovery of possession passed in respect of kudiyruppu land is a nullity. Since the status of the site as ? 'kudiyruppu'? and the status of the occupant as ?'kudiyrupputhar'? is a continuing one, the cause of action continues and hence no limitation is applicable to such suits.

(x) Ex-parte decrees passed in respect of properties alleged to be 'Kudiyruppu' without ascertaining its status with the relevant records from the Revenue Department by invoking the powers of court u/s 165 of the Evidence Act and without a speaking order as to the status of Kudiyruppu is also nullity. ”



9. A careful reading of the Division Bench judgment would show that a mere allegation that a person claims that property is a 'kudiyiruppu', does not oust the jurisdiction of the Civil Court. It needs prima facie proof in order to substantiate the same.

10. In this case, I had called for the original records to go through the defences that had been raised in the written statement. The defendant had not confined himself only to the benefits of Kudiyiruppu Act, but had also claimed that he is entitled to be in possession of the property by virtue of adverse possession. Adverse possession as already been held by this Court, is to admit to the title of the plaintiff.

11. Apart from that, the Division Bench had categorically held that a mere allegation that the property is 'Kudiyiruppu' does not mean the jurisdiction of the Court is taken away. It requires the same to be substantiated. This is because the Division Bench had specifically held that no one should be allowed to misuse the statutory provision and abuse the process of the Court. It had further held that in a suit of this nature, the defendant shall establish the applicability of the Act and till then, the Civil Court does not lose its jurisdiction.

12. It is seen from the above, the defendant had failed to contest the suit. Therefore, by no stretch of imagination, I can agree with the strenuous arguments of

Ms.R.Meenal, that the petitioner had proved that the Act applies to her client.



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13. Ms.R.Meenal would draw my attention to clause (x) stating that exparte decree without ascertaining status from the Revenue Department is a nullity. I went through the judgment, on the basis of which the decree had been passed in the present case. The learned trial Judge has not granted the decree straight away, but he has examined the plaintiff as P.W.1. The averments made in the plaint as well as evidence given by him went uncontroverted. Even if the defendant had made exparte and not filed an application under Order IX Rule 7 of C.P.C., it was still open to him to cross-examine the plaintiff and disprove the case. Unfortunately, that course of action was also not availed by the defendant.

14. Following the guidelines given by the Division Bench, in particular, clause (vi), I have to hold that the application under Section 47 of C.P.C. is not maintainable, as the defendant/judgment debtor had not raised this issue or nor had substantiated the same at the time of trial. Accordingly, Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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C.R.P.No.66



V.LAKSHMINARAYANAN,J.

Kj

To

The District Munsif, Chidambaram.

C.R.P.No.664 of 1998
and C.M.P.No.3503 of 1998

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