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CRP No.1238 of 2017
and CMP.Nos.5857 & 6411 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.1238 of 2017
and
C.M.P. Nos. 5857 & 6411 of 2017

Pachaiyammal (Deceased)

1.Saraswathiyammal

... Petitioner

Versus

1. Parkavakula Nainargal Sangam,
Tiruvannamalai
Rep.by its President
Krishnamurthy
S/o.Arunachala Nair,
Kudagaman Village,
Tiruvannamalai Taluk.

2. Lakshmi Ammal

3.Murugan

4.Devaki

...Respondents

Civil Revision Petition filed Under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order dated 29.11.2016, made in E.A.No.178 of 2002 in E.P.No.218 of 2001 in O.S.No.132 of 1976, on the file of the District Munsif, Tiruvannamalai.

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For Petitioner : Mr. R. Subramanian for
Mr. C. Ashok kumar

For R1 : Mr. R. Rajarajan
For R2 : No appearance
For R3 : Died
For R4 : No such person

ORDER

The petitioner has filed this revision petition to set aside the fair and decretal order dated 29.11.2016, made in E.A.No.178 of 2002 in E.P.No.218 of 2001 in O.S.No.132 of 1976, on the file of the District Munsif, Tiruvannamalai.

2. The 2nd defendant / 2nd respondent in the above proceedings has preferred this revision. The 1st respondent herein/ parkavakula Nainargal Sangam is the plaintiff in O.S.No.138 of 1976 and the said Sangam filed the suit against the original defendant Patchayammal. The 1st respondent / Sangam herein filed the suit for eviction of the defendant from the suit property with a direction to remove the thatched shed put up by her. The plaintiff claimed that the suit property belongs to the Sangam and originally leased out to Mannangatti Achari for monthly rent under whom the defendant's husband become sub-tenant and after death of her husband the defendant patchayammal continued in possession of the suit property, which



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is forming part of the property belongs to the Sangam. The plaintiff / Sangam is the owner of the vacant site measuring East to West 162 ft. and North to South 45 ft. bounded with 4 boundaries.

3. As per the sale deed dated 21.01.1900, the defendant took a portion of the property as lease and there is a thatched house in the said property and as shown in the rough plan as demised premises as IJKL. So they filed a suit for eviction in O.S.No.132 of 1976 before the trial Court and the suit was dismissed against which A.S.No.93/77 was filed on the file of Sub-Judge, Tiruvannamalai, and the same also dismissed. The plaintiff has preferred the Second Appeal in S.A.No.1290 of 1985, before this Court and the same was allowed on 09/09/1998. While allowing the Second Appeal, this Court directed the respondent to deliver the possession of the suit vacant site to the appellant, within a period of three months from the date of Judgment. But as the original defendant died, her daughter was impleaded as her legal heirs, and she refused to hand over the possession of the property. Hence, as a decree holder, filed execution application, wherein the Court ordered for delivery. When the Court Amina went to the suit property, the Judgement debtor caused obstruction, so the Amina delivered only the portion of the property i.e., 16x25 ft., on the eastern corner of the demise



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premises and the remaining portion under the occupation of the Judgment Debtor was obstructed. Hence, only a portion of the property was given delivery and still the Judgment Debtor occupied 16x24 ft., which belongs to the plaintiff / Sangam, because the thatched house possessed by the Judgment Debtor was surrounded by the vacant site property belongs to the plaintiffs Sangam and also encroaching the said vacant site, the judgment debtor / defendant put up construction which, she is not entitled to obstruct to take possession. Hence, the Sangam filed an application to remove the thatched Shed and deliver the vacant possession in I.A.No.178 of 2002.

4. The respondent states that description of the property in the executive proceedings is totally contrary to the decree passed by the Court and the plaintiff took possession of the property as per the decree and for the remaining extent there is no decree. Thereby, the plaintiff has no right to seek the delivery of the remaining extent of $16 \times 24 = 384$ sq.ft.

5. Before the Executing Court, both the parties adduced evidence. On considering the oral and documentary evidence, the executing Court concluded that at the time of filing of the suit the thatched house was constructed in East to West 32 ft. and North to South 45 ft., and during the



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pendency of the proceedings the defendant demolished the thatched house and constructed a terraced building and she is residing there, so the description of the property as described in the plaintiff schedule more particularly the physical feature is not present as on date. However, the suit property 32x44 sq.ft though mentioned as 16x24ft.,but as per the evidence of the Judgment Debtor, she occupied 32x44 sq.ft which belongs to the Sangam and she put up terraced building by demolishing the thatched roof, but the entire extent belongs to the Sangam and the defendant has not produced any document to show that she is the owner of the property thereby concluded that the plaintiff is entitled to take delivery of the possession of the remaining extent by removing the construction. Accordingly, Execution Application was allowed. Aggrieved by the said order the tenant / defendant / judgment debtor has preferred this revision.

6 The learned counsel for the revision petitioner submitted that the Executing Court failed to take note of the schedule of property mentioned in O.S.No.132 of 76 which would disclose, the extent of property only 384 Sq.ft. more than that plaintiff is not entitled to take delivery. But without appreciating the legal aspect, granting an order for removal of obstruction in favour of the plaintiff is totally unfair and liable to be set aside.



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7. Further, the learned counsel for the Revision Petitioner also argues that Executing Court failed to appreciate the delivery, took out by the plaintiff through Court amina with regard to the extent of 384 sq.ft. itself proves that the decree was properly executed, and more than that the plaintiff is not entitled. The evidence adduced by the Revision Petitioner as such is not properly appreciated. Hence, he prays to set aside the findings of the Executing Court as it is sustained with illegality.

8. By way of reply the learned counsel for the respondent / Decree holder / plaintiff submits that even after 40 years of the decree the Sangam is not able to take possession of the property due to unlawful obstruction made by the judgment debtor / defendant and the obstruction was rightly ordered to be removed by the executing Court. As the defendant failed to prove that she has right over the property, he prayed to dismiss the petition as devoid of merits.

9. Heard, Mr. R. Subramaniam, learned counsel for Mr. C. Ashok Kumar, learned counsel for the petitioner and Mr. R. Rajarajan, learned Counsel for the first respondent and perused the materials available on record.

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10. Considering both side submissions and on a perusal of the record, it reveals that the plaintiff / Sangam is the owner of the vacant site measuring East to West 162 ft. and North to South 45 ft. bounded with 4 boundaries. as shown as ABCD in the rough sketch, by way of purchase on 25.01.1900. The Husband of the original defendant was a tenant and after his death the defendant patchayammal was continuously enjoying the suit property as a tenant, after her demise, now her daughter is in the occupation of the property. With regard to the dispute, the Sangam filed the suit for eviction before the Court below it was dismissed but in Second Appeal the decree was granted in favour of the plaintiff in S.A.No.1290 of 1985 on 09.09.1998. Thereafter, he filed executing proceedings to take the delivery of the property. When the Amina went to the property, he found that the plaintiff encroached some of the property and put up terraced building by removing thatched shed and also caused obstruction stating that as per the decree the plaintiff is entitled only for the $16 \times 24 = 384$ sq.ft, more than that they are not entitled to take possession of the property. But admittedly at the time of filing of the suit there was a thatched shed in the suit property but during the pendency of the proceedings the said thatched shed was removed and the defendant put up a pucca terraced building by encroaching the portion of the property of plaintiff / Sangam. This aspect was illustrated from



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the mouth of RW1, during the Cross Examination before the executing Court
as follows:

"மனு சொத்து எனக்கு சொந்தமான சொத்தாகும் மனுசொத்தை நான் கிரயம் பெறவில்லை. ஆனால் கடந்த 50 ஆண்டுகாலமாக அனுபவித்து வருகிறேன். ... நடராசன், தணிகாசலம் சொத்துக்கு தேற்கால் என்னுடைய சொத்து அமைந்துள்ளது. அவர்களை மனுதாரர்கள்தான் காலிசெய்துவிட்டார்கள் என்றால் சரிதான்.... மேற்சொன்ன சொத்துக்குத்தான் எனக்கும் மனுதாரருக்கும் வழக்கு நடந்து வருகிறது..... இவ்வழக்கு தாக்கலான காலகட்டத்தில் கூரை வீட்டின் நீளம் கிழக்கு மேற்கு 32 வடக்கு தெற்கு 44 அடி ஆகும். தற்போது நான் அந்த கூரை வீட்டை இடித்துவிட்டு தான் மெத்தை வீடாகவும் ஓட்டு வீடாகவும் கட்டி உள்ளேன். மெத்தை வீட்டை கட்டி சுமார் 15 ஆண்டுகள் ஆகின்றன, மேற்சொன்ன இடத்திற்கு தான் வாதி என்மீது வழக்கு தாக்கல் செய்திருந்தார்."

The evidence of RW2, which reads as follows:

"தாவா சொத்தின் கதவு எண் 58. இந்த வழக்கு 45 வருடங்களுக்கு மேலாக நடக்கிறது. கதவு எண் 58, ஆரம்பத்தில் கூரை வீடு என்றால் சரிதான். அது தற்போது மெத்தை வீடாக உள்ளது. என் அம்மா லோன் போட்டு கட்டியது. மெத்தை வீடு கட்டி 20, 30 வருடமாகிறது.... கூரை வீட்டுக்கு நீள அகலம்



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தெரியாது. அந்த கூரை வீட்டை இடித்து தான் மெத்தை வீடு கட்டினார்கள். வழக்கு நிலுவையில் இருக்கும்போது தான் அந்த கூரை வீட்டை இடித்து தான் மெத்தை வீடு கட்டினார்கள் என்றால் சரிதான்..... என் அப்பா கட்டிய கூரை வீடு நயினார் சங்கத்திற்கு சொந்தமானது என்று உயர்நீதிமன்றத்திலே தீர்ப்பானது என்றால் இல்லை."

11. Therefore, from the evidence of RW.1 and RW.2 as well as the physical feature as on date, the suit property clearly reveals that the defendant removed the thatched house and constructed a terraced building for an extent of 32x44 ft. Admittedly the entire extent ABCD as shown in the rough plan belongs to the plaintiff Sangam within that suit property was forming part of the one portion, now the thatched shed was demolished and the defendant put up a terraced building by encroaching the property, can be vacant site belongs to the Sangam. Furthermore, it is an admitted fact that the defendant has no title over the property, within ABCD portion, though she obtained patta during the pendency of the proceedings, paid the property tax as if they are the absolute owner of the property, demolished the thatched shed and put up terraced building. Therefore, these documents will not support the case of the judgment debtor. Further, during the trial proceedings, they did not claim that, they are the absolute owner of the property and as per the findings of the



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Second Appeal, the plaintiff Sangam is the owner of the property against which the defendant has not preferred any appeal before the Hon'ble Supreme Court, so as on date, the decree is in force.

12. Accordingly, the plaintiff is the absolute owner of the property eventhough the thatched shed was described in the suit schedule property, at the time of filing of the suit, during the pendency of the proceedings the thatched shed was removed and the terraced building was constructed in that place by occupying the same and also enhanced the property of Sangam. The vacant site belongs to the Sangam, and it clearly shows that the defendant caused obstruction to take the delivery possession of the property belonging to the plaintiff. Therefore, the Executing Court has rightly accepted the claim of the plaintiff and gave a direction to remove the obstruction, as such it is valid and permissible under law which needs no interference by this Court.

13. Furthermore, the learned counsel for the petitioner relied the following authorities (i) reported *in (1996) 4 SCC 144, Samir Sobhan Sanyal vs.Tracks Trade Private Ltd. and others*, which reads as follows:

"6.It would thus be clear that without any decree or order of eviction of the appellant from the demised premises, he



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has been unlawfully dispossessed from the premises without any due process of law. The question, therefore, is: whether he should be allowed to remain in possession till his application under Order 21, Rules 98 and 99 is adjudicated upon and an order made. Though the learned counsel for the first respondent and also for the third respondent, ho is one of the transferees from the sixth respondent, sought to contend that the appellant has no right to remain in possession after the lessee, M/s.India Foils Ltd. had admitted by a resolution with the arguments. At this stage, we are only concerned with his admitted possession of the demised premises....."

(ii) **(2002) 2 SCC 256, Om Prakash Gupta vs.Ranbir B.Goyal**, in which it was held as follows:

"11.The ordinary rule of Civil Law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of



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the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In pasupuleti venkateswarlu V.Motor & General Traders this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The court may in such cases bend the rules of procedure if no substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the Court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned:(i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstances repelling resort to that course in law or justice,(iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed....."

Though the ratio relied by the petitioner is acceptable one, it does not apply to the facts of the case in hand as discussed above.

14. Accordingly, this Civil Revision Petition is dismissed as devoid



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of merits. The order passed by the Executing Court is confirmed and the petitioner is directed to surrender the vacant possession of the Suit property within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

23.08.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

- 1.The District Munsif, Tiruvannamalai.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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