

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.277 of 2015  
and M.P.No.1 of 2015

Meenatchi

... Appellant/3rd Party

-Vs-

1. Manickam

.... 1st Respondent/Plaintiff

2. Balan @ Kanagasabai

3. Baskaran @ Ramalingam

... Respondents 2 & 3/  
Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 18.03.2015 made in A.S.No.9 of 2014 on the file of the Additional Subordinate Judge, Puducherry, confirming the order and decretal order made in E.A.No.153/2007 in E.P.No.77 of 2003 in O.S.No.1822/1986 on the file of the Additional District Munsif, Puducherry.

For Appellant : Mr.T.P.Manoharan

For 1<sup>st</sup> Respondent : Mr.R.Gowthama Narayanan

For respondents 2 & 3 : No appearance

सत्यमेव जयते  
J U D G M E N T

The suit in O.S.No.1822 of 1986 on the file of the learned Principal District Munsif, Pondicherry was filed by the 1<sup>st</sup> respondent herein against the respondents 2 and 3 herein. That was a suit filed for declaration of title and for recovery of possession of the suit property. The trial court by decree and judgment dated 21.12.1987 decreed the suit. Thereafter, the decree holder filed an Execution Petition in E.P.No.77 of 2003

on the file of the same court. In that Execution Petition, delivery was ordered by the trial court. When the court Amin came to the suit property to deliver the same to the decree holder, the petitioner who was a 3<sup>rd</sup> party to the suit filed an Obstruction Petition on 07.11.2003. Therefore, delivery could not be effected.

2. Thereafter, the decree holder/1<sup>st</sup> respondent filed E.A.No.635 of 2003 in E.P.77 of 2003 for removal of the said obstruction as provided under Order 21 Rule 97 CPC. When the same was pending, the defendants in the suit/judgment debtors filed CMA.No.7 of 2004 against the order of delivery made in the Execution Petition. That petition was allowed by the learned II Additional District Judge, Pondicherry on 24.01.2005. Since the delivery order itself was set aside by the Appellate Court, E.A.No.635 of 2003 had obviously become infructuous and therefore, the same was dismissed as not pressed on 08.03.2005.

3. Thereafter, the Execution Court proceeded with the E.P.No.77 of 2003. Finally, the Execution Court again ordered delivery of property. After the said delivery order, again the petitioner/3<sup>rd</sup> Party filed an Obstruction Petition. In view of the said obstruction, delivery could not be effected. In order to remove the said obstruction, the decree holder/1<sup>st</sup> respondent herein filed E.A.No.153/2007 before the Execution Court.

4. When the same was pending, the petitioner/3<sup>rd</sup> party filed E.A.No.16 of 2014 questioning the maintainability of E.A.No.153 of 2007. This was filed on the ground that E.A.No.153 of 2007 was not maintainable in view of the earlier order in E.A.No.635 of 2003 dismissing the petition filed for removal of obstruction.

5. The Execution Court dismissed E.A.No.16 of 2014. As against the same, the appellant/Obstructor filed CRP.No.2625 of 2014. The Execution Court ordered removal of obstruction and also ordered for delivery. As against the order of removal of obstruction, she filed an appeal in A.S.No.9 of 2014 and as against the consequential order of delivery, strangely, she filed a revision in CRP.PD.No.2626 of 2014 before this Court. This Court by a common order dated 19.01.2015 dismissed both the Civil Revision Petitions, namely, CRP.PD.Nos.2625 and 2626 of 2014 and this Court directed the appellate court to dispose of A.S.No.9 of 2014.

6. Thereafter, the learned Additional Sessions Judge, Pondicherry, before whom A.S.No.9 of 2014 came up for hearing, dismissed the same by decree and judgment dated 18.03.2015. As against the same, this Second Appeal has been filed by the Obstructor.

7. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the decree holder/1<sup>st</sup> respondent. There is no representation for the judgment debtors. I have also perused the records carefully.

8. The learned Counsel for the appellant would submit that the Execution Court did not conduct proper trial before passing of a decree in E.A.No.153 of 2007. According to the learned Counsel, in E.A.No.153 of 2007, the decree holder was examined as P.W.1 on 07.03.2014. He was not cross-examined immediately by the appellant/obstructor. The matter was adjourned to 12.03.2014 for cross-examination of P.W.1. On 12.03.2014, P.W.1 was present, but the 3<sup>rd</sup> party obstructor had changed her counsel. The counsel who had afresh entered appearance for the Obstructor prayed for adjournment. Accordingly, it was adjourned to 01.04.2014. The learned Counsel for the appellant would further submit that on 07.04.2014, the matter was adjourned since E.A.No.16 of 2014 was pending. Again, when the matter was taken up on 21.04.2014, as per the direction issued by this Court in CRP.PD.No.3636/2013 dated 04.04.2014, the E.A.No.16 of 2014 was heard and thereafter, there was no further opportunity afforded to the obstructor to cross-examine P.W.1 and to let in evidence on his side. Thus, according to the learned Counsel for the appellant, the order passed in E.A.No.153 of 2007 is not in accordance with law and therefore, the I Appellate Court ought to have interfered with the same.

9. But the learned Counsel for the decree holder would vehemently oppose this. According to him, there is no substantial question of law at all involved in this Second Appeal. He would further submit that though the suit is of the year 1986, the delivery of the property could not be taken for about 29 years because the petitioner has been filing one petition or the other, initiating one proceedings or the other before various courts. He would further submit that sufficient opportunity was given to the appellant to let in evidence and still, she did not let in any evidence to substantiate her contention. He would further submit that the appellant does not

claim any substantive right over the property, instead, she claims only possession by way of agreement of sale with her father.

10. I have heard the above submissions.

11. As rightly pointed out by the learned Counsel for the 1<sup>st</sup> respondent/decree holder, I find that there is no substantial question of law involved warranting admission of this Second Appeal. The narration of facts herein above would go to clearly show that the appellant has been very successful in protracting the proceedings for about 29 years by initiating one proceedings or the other before various forums. This is a case of classic example of a decree holder struggling to enjoy the fruits of the decree on account of the obstruction made by an unscrupulous litigant for nearly three decades.

12. The only issue raised in this Second Appeal by the learned Counsel for the appellant is that there was no opportunity whatsoever afforded to the appellant to prove her claim in E.A.No.153 of 2007 as per the objection made by her. But, a perusal of the docket orders passed by the Execution Court would go to show that when the matter was taken up on 21.04.2014, the appellant did not insist to cross-examine P.W.1 or to let in any further evidence. It is very obvious from the docket order passed by the Execution Court that again on 22.04.2014, when the matter was taken up for hearing before the Execution Court, the Execution Court framed the points of consideration and heard the counsel for both sides. Even at that time, the appellant/obstructor did not insist to let in any evidence. It would go to show that despite sufficient opportunities afforded, the appellant did not let in any evidence at all in support of her claim. Further, her claim itself is not based on any title. The decree holder claims that the suit property was purchased by him from the father of the appellant herein. But the appellant/Obstructor claims that she had entered into a sale agreement with her father and on account of the same, she is in possession of the said property. But she has not proved the same. Further, since the question involved in the said finding is only on facts and there is no question of law involved, I do not find any perversity in the findings of the courts below. In my considered view, the appellant is an unscrupulous litigant who has been very successful in protracting the proceedings for the past 29 years. Since I do not find any substantial question of law involved in this Second

Appeal warranting admission of the same, this Second Appeal deserves only to be dismissed even without admission.

13. In the result, the Second Appeal fails and the same is accordingly dismissed and the decree and judgment of the appellat court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Subordinate Judge,  
Puducherry.
- 2.The Additional District Munsif,  
Puducherry.
- 3.The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Mr.T.P.Manoharan, Advocate, S.R.No.63543  
+1cc to Mr.R.Gowthama Narayanan, Advocate, S.R.No.63989

S.A.No.277 OF 2015

KJI (CO)  
CA(29/01/2016)

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