



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P(NPD) (MD)No.2542 of 2015

V.Rajayyan Robin @ Thangappan

... Petitioner/Petitioner
/Defendant No.102

Vs.

- 1.Mary
- 2.Pushpam
- 3.Lilly Bai
- 4.Stella Bai
- 5.Aji
- 6.Suji
- 7.C.Razalraj
- 8.C.Kanagaraaj
- 9.Sornamma
- 10.Franklin
- 11.Jebasilin
- 12.Francilikn

.. Respondents 1 to 12/Respondents
159 to 222/Defendants 152 to 154

PRAYER: Civil Revision Petition is filed under Section 115 of the Constitution of India, to direct the learned Principal District Munsif, Kuzhithurai to exercise the jurisdiction vested on him and to number the unnumbered E.P. in O.S.No.484 of 1961, on the file of the I Additional District Munsif Court, Nagercoil.

For Petitioner : M/s.T.S.R.Venkataramana

ORDER

Invoking the provisions Section 115 of the Civil Procedure Code, the petitioner has approached this Court with this Civil Revision Petition, to direct the learned Principal District Munsif, Kuzhithurai to exercise the jurisdiction vested on him and to number the unnumbered E.P. in O.S.No.484 of 1961, on the file of the I Additional District Munsif Court, Nagercoil.

2. Heard Mr.T.S.R.Venkataramana, learned counsel appearing for the petitioner and perused the averments of the grounds of the Civil Revision Petition.

3.It appears that one Cielal and others had filed a suit in O.S.No.484 of 1961 against 243 defendants of whom the petitioner herein, is the defendant No.102, seeking the relief of partition on the file of the learned I Additional District Munsif, Nagercoil. A preliminary decree was passed on 05.07.1971. Thereafter, it is revealed that an appeal, challenging the preliminary decree was filed before the learned I Additional District Court, Nagercoil and thereafter, a second appeal was preferred before this Court in S.A.No.1199 of 1980. Then it is manifested from the records that a final decree was passed on 09.03.2013.



4. On the strength of the final decree dated 09.03.2013, the petitioner, who is the defendant No.102 and seven others viz., D.121, D.122, D.38, D.40, D.165, D.166 and D.72 have filed the execution petition on the file of the I Additional District Munsif Court, Nagercoil to execute the final decree in respect of their respective shares. Totally 139 respondents have been impleaded in the execution petition.

5. It is obvious to note here that the relief against the respondents 13 to 139 has been given up for the present. It is also revealed that the suit in O.S.No.484 of 1961 was originally filed on the file of the I Additional District Munsif Court, Nagercoil and hence, the execution petition was transferred to the file of the Principal District Munsif Court, Kuzhithurai at Kanyakumari District.

6. According to Mr.T.S.R.Venkataramana, learned counsel appearing for the revision petitioner, the Principal District Munsif Kuzhithurai is refusing to number the execution petition saying that all the 243 defendants shall have to be added as parties in the execution petition.

7. In this connection, Mr.T.S.R.Venkataramana, learned counsel for the petitioner has submitted that even as per the final decree more than 120 defendants were dead in the last 52 years and therefore, it might not be necessary and equally it might not be possible to add the dead persons as they were all marked as dead in the final decree itself.

8. Mr.T.S.R.Venkataramana, learned counsel has also added that it is the settled law that every plaintiff is a defendant and every defendant is a plaintiff and that was why this revision petition and his associates had paid Court fees and got their share in the final decree allotted and unfortunately it was overlooked by the Principal District Munsif.

9. Mr.T.S.R.Venkataramana, learned counsel has also made reference to the provisions of Rules 11, 22 and 35 of Order 21 of C.P.C., and he has also submitted that Sub-rule(1) of Rule 22 of Order 21 of C.P.C., envisages that where an application for an execution is made against the legal representative or assignee the Court executing the decree shall issue a notice to the person against whom the execution is applied for requiring him to show cause, on the date to be fixed, why the decree should not be executed against him. He has also continued that the petitioners in the execution petition had sought delivery of their share from the respondents who were in possession of the property. Hence, the petitioners when did not want to take delivery from the other respondents in the final decree they need not be impleaded. The legislature also did not permit the Court to compel the decree holders to take delivery from the respondents against whom they did not seek any relief in the execution petition.

10. Mr.T.S.R.Venkataramana, learned counsel in support of this contention has made reference to the decision in **LEELAVATHI AMMAL V. NENI KAVUR BAI** reported in **A.I.R. (30) 1943 Madras 179**. In this case, the Division Bench of this Court has held that "a decree can be executed without the judgment debtor or his representative being made a party to the execution proceedings even when the decree sought to be executed is a



money decree against the judgment-debtor. All that O.21, R.11 requires is that the names of parties to the suit should be mentioned and also the name of the person against whom the execution is sought. Where therefore a property attached before judgment is sold during the pendency of the attachment and the judgment debtor is adjudicated an insolvent in the meantime, an application for execution by sale of the attached property after bringing the purchaser on record is maintainable. The Official Assignee need not be joined as a party."

11. According to Mr. T. S. R. Venkataramana, learned counsel for the petitioner, the petitioners have filed the execution petition against the respondents from whom they are seeking possession of their respective shares. He has also maintained that though several defendants were impleaded in the suit, insofar as the petitioners are concerned, their respective shares could be recovered only from the respondents who have been impleaded herein and therefore, all the defendants in the suit need not be impleaded.

12. Sub Rule (2) of Rule 11 of Order 21 of C.P.C., contemplates that "Save as otherwise provided by sub-rule (1) every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:-

.....

- (i) "the name of the person against whom execution of the decree is sought;
- (j) the mode in which the assistance of the Court is required, whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, or any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver
 - (v) otherwise, as the nature of the relief granted may require."

13. Sub-rule (1) (2) of Rule 35 of Order 21 reads as under:-

"R.35. Decree for immovable property.-(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuse to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree."

14. This Court would like to point out that as a matter of fact as per Order 21 Rule 35 C.P.C., the possession of the immovable property covered by a decree can be delivered to decree holder by removing any person bound by the decree.

15. Keeping in view of the above facts, it is thus made clear that the respondents against whom the execution application is filed are bound by decree. The petitioners have also filed the execution petition seeking



delivery of possession as against the present respondents and they do not want to execute the decree against the remaining defendants in which, the executing Court shall not compel the petitioner to include the other defendants against whom they do not want to execute the decree.

16. Keeping in view of the above facts, this Civil Revision Petition is allowed and the learned Principal District Munsif, Kuzhithurai is directed to exercise jurisdiction vested on him and number the unnumbered E.P in O.S.No.484 of 1961 and dispose of the same in accordance with law as expeditiously as possible, as the suit is relating to the year 1961. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To
1.The Principal District Munsif,
Kuzhithurai.

2.The I Additional District,
Nagercoil.

+1cc to M/S.T.S.R.Venkatramana, Advocate in SR.No. 66832

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

TS/22.12.2015/4P-5C/NGM-SS

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