

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1403 of 2015
and M.P.No.1 of 2015

Deva Solange

... Petitioner

Vs.

1.Marcelle Antoinette Satchidanandam

2.Nittia Alexandra Selva Julien

3.Sacravorthy Charles

4.Sandy Marie Shantalle Julien

5.Lakshmi Ammal

6.Mohammad Ibrahim

7.Abdul Wahed Sahib

8.Govindaswamy Gounder

9.Louis Gananodicam

10.Dharmalinga Nattar

Deva Ramachandran @ Gandara Thambia (Died)

11.Janaki Ammal

12.Adikesavan

13.Adhilakshmi @ Chinnappapa

... Respondents

(R5 to R13 have not appeared before the Court and hence, not necessary parties to the CRP and hence, they are given up herein)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decreetal order dated 27.02.2015 made in E.P.No.80 of 2012 in O.S.No.64 of 1970 on the file of the Additional Sub-Judge, Puducherry.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel
for Mr.T.M.Naveen
For Respondents : Mr.K.N.Nataraj (R1 to R4)

ORDER

Challenging the order passed in E.P.No.80 of 2012 in O.S.No.64 of 1970 on the file of the Additional Subordinate Court, Puducherry, the 12th respondent in the Execution Petition has filed the above Civil Revision Petition.

2.Pursuant to the decree dated 30.11.1974 made in O.S.No.64 of 1970, the Decree Holder filed the Execution Petition in E.P.No.64 of 1975 on 24.02.1975. Subsequently, in the year 2012, the Decree Holder filed another Execution Petition in E.P.No.80 of 2012 in O.S.No.64 of 1970 for the very same relief sought for in E.P.No.64 of 1975 on the file of the Additional Sub Court, Puducherry, subsequently, transferred and re-numbered as E.P.No.66 of 1988 on the file of the I Additional District Munsif Court, Puducherry.

3.Heard Mr.T.P.Manoharan, learned senior counsel for the petitioner and Mr.K.N.Nataraj learned counsel appearing for the respondents 1 to 4.

4.Mr.T.P.Manoharan, learned senior counsel appearing for the petitioner submitted that the 2nd Execution Petition filed by the Decree Holder in E.P.No.80 of 2012 is clearly barred by limitation, therefore, the order passed in E.P.No.80 of 2012 dated 27.02.2015 is liable to be set aside.

5.On a perusal of the materials available on record, it could be seen that the suit in O.S.No.64 of 1970 was decreed by the Additional Subordinate Court, Puducherry on 30.11.1974. Pursuant to the decree passed in O.S.No.64 of 1970, the Decree Holder filed an Execution Petition in E.P.No.64 of 1975 on 24.02.1975, which was subsequently transferred to the file of the 1st Additional District Munsif Court, Puducherry and re-numbered as E.P.No.66 of 1988. As against the judgment and decree passed in O.S.No.64 of 1970, the defendants 9 to 11 preferred an Appeal in A.S.No.628 of 1976, which was dismissed by this Court on 07.01.1980. In the year 1985, the defendants filed a suit in O.S.No.723 of 1985 to declare the decree granted in O.S.No.64 of 1970 as null and void. The said suit was decreed by the trial Court on 28.08.1991, which was challenged by the defendants in A.S.No.35 of 2006 on the file of the Additional Subordinate Court, Puducherry and the Lower Appellate Court had reversed the judgment and decree passed in O.S.No.723 of 1985 by its judgment and decree dated 21.12.2010. The Execution Petition filed in the year 1975 was

dismissed by the Executing Court on 05.09.2014 for non-prosecution. During the pendency of the Execution Petition in E.P.No.66 of 1988 (previously E.P.No.64 of 1975), the Decree Holders filed another Execution Petition in E.P.No.80 of 2012 before the Additional Subordinate Court, Puducherry for the very same relief sought for in E.P.No.64 of 1975. By order dated 27.02.2015, the Executing Court ordered delivery. Against this order, the 12th respondent in the Execution Petition has filed the above Civil Revision Petition.

6. On a perusal of the dates mentioned above, it could be seen that the period of limitation of 12 years for executing the decree had expired on 30.11.1986. However, an Appeal in A.S.No.628 of 1976 was filed as against the judgment and decree passed in O.S.No.64 of 1970, which was ultimately dismissed by this Court on 07.01.1980. If three and a half years is added (i.e.) the period during which the First Appeal was pending before this Court, the period of limitation would have extended upto June 1989. The suit in O.S.No.723 of 1985 was decreed by the trial Court, setting aside the judgment and decree passed in O.S.No.64 of 1970 on 28.08.1991. Therefore, when the decree in O.S.No.64 of 1970 was set aside in O.S.No.723 of 1985 on 28.08.1991, the period of limitation for executing the decree in O.S.No.64 of 1970 had lapsed. The decree granted in O.S.No.723 of 1985

was set aside by the Additional Subordinate Court, Puducherry on 21.12.2010 and the 2nd Execution Petition was filed by the Decree Holders on 26.08.2011.

7. When the period of limitation had lapsed as early as in the year 1989, the filing of the 2nd Execution Petition in the year 2011 is clearly barred by limitation. The period of 12 years for executing the decree had expired in the year 1989 itself. Therefore, the Execution Petition filed by the Decree Holders in E.P.No.80 of 2012 is barred by limitation.

8. In these circumstances, the order passed by the Additional Subordinate Court, Puducherry in E.P.No.80 of 2012 in O.S.No.64 of 1970 is liable to be set aside. Accordingly, the same is set aside. The Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

05.08.2016

To

The Additional Sub-Judge,
Puducherry.

M.DURAIWAMY,J.
va

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