

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.10.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (NPD) No.2544 of 2009
&
M.P.No.1 of 2009

K.Suganeswari

... Petitioner

Vs.

1.JKK Rangammal Charitable Trust,
rep. By its Managing Trustee K.Senthamarai
W/o.Krishnaraj
Annai Illam, Salem Road
Kumarapalayam Village and Post
Thiruchengode tk, Namakkal Dist.

2. Sengodan @ Sengattaiyan

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order passed in E.A.No.114 of 2002 in E.P.No.9 of 2001 in O.S.No.214 of 2000 on the file of the District Munsif, Thiruchengode dated 26.02.2007.

For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.N.Manokaran for R1
No appearance for R2

ORDER

Impugning the fair and decretal order dated 26.02.2007 and made in E.A.No.114 of 2002 in E.P.No.9 of 2001 in O.S.No.214 of 2000 on the file of the District Munsif, Tiruchengode, this revision petition is filed under Section 115 of the Code of Civil Procedure.

2. The revision petitioner herein is a third party to the suit in O.S.No.214 of 2000 as well as the execution petition in E.P.No.9 of 2001. In fact she is the claimant in E.A.No.114 of 2002, which seems to have been filed by her under Section 47 of the Code of Civil Procedure as against the respondents herein to enquire into the disputes involved in this matter and to decide the lawful and genuine claim of the petitioner over the properties described in the claim petition and to declare that she is the absolute owner of the suit property.

3. The claim petition in E.A.114 of 2002 was strenuously resisted by the first respondent by filing her counter statement repudiating the claim made by the revision petitioner and after hearing both sides, the learned District Munsif, Tiruchengode after accepting the contention made by the first respondent, had proceeded to dismiss the execution application in E.A.No.114 of 2002.

4. It is significant to note here that the learned District Munsif,

Tiruchengode had consolidated the execution application filed by the revision petitioner in E.A.No.114 of 2002 along with the suit in O.S.No.175 of 2002 which appears to have been filed by the revision petitioner as against the respondents seeking the relief of permanent injunction restraining the respondents from in any manner disturbing her peaceful possession and enjoyment of the property described in the suit under the guise of executing the decree dated 15.12.2000 and passed in O.S.No.214 of 2000 on the file of the District Munsif Court, Tiruchengode by way of permanent injunction. It is to be noted that both the suit in O.S.No.175 of 2002 and the execution application in E.A.No.114 of 2002 were dismissed by the Court below. As afore stated, the revision petitioner challenging the legality of the impugned order dated 26.02.2007 and made in E.A.No.114 of 2002 has preferred the present civil revision petition.

5. But, this Court is kept in dark with reference to the fact as to whether any appeal is filed by the revision petitioner as against the judgment and decree passed by the Court below in the suit in O.S.No.175 of 2002. This Court has gone to the factual matrix of the case referred to in Section 47 application i.e., E.A.No.114 of 2002 which was filed by the revision petitioner along with the averments of the plaint in the suit in O.S.No.175 of 2002, which also seems to have been filed by the very same revision petitioner.

6. Having given its careful consideration this Court is of firm view that filing of the execution application in E.A.No.114 of 2002 itself is a futile exercise and vexatious one, which according to this Court was filed by the revision petitioner only to procrastinating the execution proceedings which was initiated by the first respondent in the execution petition in E.P.No.9 of 2001. In fact, the revision petitioner is not a party to the suit in O.S.No.214 of 2000 which was filed by the first respondent as against the second respondent for recovery of possession as well as for recovery of rental arrears. As stated in the opening paragraph, the revision petitioner herself is a third party to the suit in O.S.No.214 of 2000 as well as the execution proceedings.

7. Her claim is this:-

She is the absolute and exclusive owner of the suit property by virtue of the registered sale deed dated 26.06.2000 which was purchased by her for proper and valuable consideration. Originally the suit property was belonged to J.K.K.Rangammal Charitable Trust, Komarapalayam and the trust was managed and administered by its trustee by name N.Dhanalakshmi, W/o. Late J.K.K.Nataraja Chettiar, Komarapalayam. According to the revision petitioner, even prior to her purchase under the above sale deed dated 26.06.2000, she and her family members had/have been in possession and enjoyment of the suit property as a lessee under the said trust. After the death of the said J.K.K.Nataraja Chettiar, who is the

founder of the said Trust, there were misunderstanding between N.Dhanalakshmi and the first respondent Senthamarai (D1) in respect of the personal properties owned by J.K.K.Nataraja Chettiar. On account of this reason, the respondent had created bogus and fraudulent Will dated 29.06.1995 alleging that it was executed in her favour by J.K.K.Nataraja Chettiar and on the strength of the said Will she began to demand rent from the revision petitioner and her family members. When the revision petitioner and her family members had refused to pay the rent to the first respondent, as they being, according to the revision petitioner, the absolute owner of the suit property, in order to get vengeance on the revision petitioner, the first respondent had filed a suit in O.S.No.214 of 2000 as against the second respondent as if he is a tenant under her in respect of the suit property and thereby sought the relief of recovery of arrears of rent and recovery of possession of the suit property from the second respondent.

8. In fact, that suit was decreed ex parte on 15.12.2000. The said suit O.S.No.214 of 2000 was filed by the first respondent in the capacity of Managing Trustee of the said Trust. In pursuant to the said decree passed in the above suit as against the second respondent, the first respondent had taken out an execution proceedings in E.P.No.9 of 2001 for taking delivery of the property. In the execution proceedings the second respondent/second defendant remained ex parte and in consequence thereof, an ex parte order was passed in the execution petition in E.P.No.9 of 2001. On the basis of the

said order, the Court Ameen along with the police officials came to the suit property for evicting the revision petitioner. While so, the revision petitioner had informed that she was the absolute owner of the suit property and this was not accepted by the Court Ameen and the local police and only under this circumstance, she happened to file the execution application in E.A.No.114 of 2002.

9. The first respondent had vehemently disputed the alleged sale deed dated 26.06.2000 which is said to have been purchased by the revision petitioner. It is her specific case that a Trust property could not be allowed to be sold. It is also her case that as per the Trust Deed Dated 26.06.1969, a Managing Trustee is not entitled to sell the property and therefore, the revision petitioner is not entitled to claim any right, title or interest over the property of the Trust, which is described in the Execution Application in E.A.No.114 of 2002.

10. It is also the case of the first respondent that the second respondent was the tenant and the revision petitioner/claimant is the close relative of the second respondent and in order to avoid eviction, a sale deed was created by the second respondent in collusion with his vendor and that the vendor of the claimant was not having any right to sell the property. As afore stated, the first respondent had filed the above said suit in O.S.No.214 of 2000 on the file of the learned District Munsif, Tiruchengode for delivery of

possession and also for recovery of arrears of rent which was decreed on 15.12.2000.

11. It is also revealed from the counter statement filed by the first respondent that the said Dhanalakshmi had filed a suit in O.S.No.242 of 1998 on the file of the District Munsif, Srivilliputhur to declare her as the Managing Trustee which was dismissed on 15.11.2001 and therefore, she has contended that the revision petitioner is not entitled to claim any right in the suit property, more so, she cannot search title from the said Dhanalakshmi, whose claim was rejected by the District Munsif, Srivilliputhur on 15.11.2001 in the suit in O.S.No.242 of 1998.

12. Mr.V.S.Kesavan, learned counsel for the revision petitioner has contended that the Court below had erroneously clubbed the execution application in E.A.No.114 of 2002 along with the suit in O.S.No.175 of 2002 and delivered common judgment which itself was against the procedure known to law. He would further contend that the provisions of Section 47 was misconstrued by the Court below and that the Court below had also failed to consider the Advocate Commissioner's report through which the possession of the revision petitioner in respect of the suit property was proved.

13. In support of his contention he has made reference to the decision of this Court in ***R.Panneerselvam V. A.Subramanian and another*** reported in ***2009 (3) CTC 493*** wherein a learned single Judge of this Court has held that only in a case where there is paucity of evidence relating to proving of the parties concerned, the title of the plaintiff can be gone into incidentally. When there is clear evidence to show that the plaintiff is in possession the lower appellate Court is not correct in holding that the plaintiff has not proved his title and consequently, he is not entitled to permanent injunction. It was further held that even a trespasser, who is in established possession is entitled to injunction and therefore, the learned Judge has held that the suit for bare injunction is maintainable.

14. Insofar as the present revision petition is concerned, though the suit in O.S.No.175 of 2002 was filed by the revision petitioner seeking the relief of bare injunction, she has sought the relief of declaration in the execution application, which is an issue in the present revision petition and since her title is disproved by way of decree obtained by the first respondent in the suit in O.S.No.214 of 2000, this decision will not be of much useful to the case of the revision petitioner.

15. It is the specific case of the first respondent that she being the managing trustee has filed the suit in O.S.No.214 of 2000 as against the second respondent, as he was the tenant, for recovery of possession as well

as for recovery of rental arrears in respect of the suit property. That suit was decreed on 15.12.2000 and based on the decree obtained by her she had also filed an execution petition in E.P.No.9 of 2001. That petition was also allowed and an order was also passed subsequently. In both the suit in O.S.No.214 of 2000 as well as the execution petition in E.P.No.9 of 2001, the second respondent against whom the above said proceedings were taken out, had failed to participate in the proceedings and therefore, he remained ex parte. In both the proceedings, the revision petitioner was also not a party. If, according to her claim, she is having title or interest over the suit property, she could have definitely impleaded herself in the suit and put forth her defence. But she had failed to implead herself in the above said suit. Instead, she has chosen to file a suit in O.S.No.175 of 2002 claiming that she is the absolute over of the property, which according to her, was purchased under a sale deed dated 26.06.2000 from one N.Dhanalakshmi who was the erstwhile managing trustee of JKK Rangammal Charitable Trust, created by one J.K.K.Nataraja Chettiar, Komarapalayam.

16. As indicated by Mr.N.Manoharan, in the suit filed by the said Dhanalakshmi in O.S.No.242 of 1998, her claim was rejected and it was decided in the said suit on 15.12.2001 that she was not the Managing Trustee of the said Trust. When such being the case the alleged sale deed dated 26.06.2000 said to have been purchased by the revision petitioner from the said Dhanalakshmi automatically goes out and no value is attached

to the said sale deed. Apart from this she has not evinced any interest to putforth adequate legal evidence to show that she was the tenant of the suit property prior to her purchase.

17. On the other hand, Mr. N.Manoharan was able to demonstrate before this Court that the first respondent was the managing trustee and she had taken several legal proceedings so as to retrieve the properties of the Trust, which were sold out earlier by the alleged erstwhile managing trustee and accordingly the suit in O.S.No.214 of 2000 was also filed by her which was decreed on 15.12.2000 and since the said decree was not set aside by any competent Court of law, it is still valid and therefore the execution proceedings were taken out and allowed and therefore the valid decree passed in the suit in O.S.No.214 of 2000 could not be questioned under the guise of filing execution application.

18. In support of his contention he has also placed reliance upon the decision of the Apex Court in ***Ravinder Kaur V. Ashok Kumar and Another*** reported in ***(2003) 8 SCC 289*** wherein the Apex Court has held that the Courts should be vigilant to see through the diabolical plans of the judgment-debtors to deny the decree holders, the fruit of the decree obtained. He has also made reference to another decision of the Apex Court in ***Satyawati Vs. Rajinder Singh and Another*** reported in ***(2013) 9 SCC 491***. In this case, while speaking on behalf a three judges Bench, Hon'ble

Mr.Justice Anil R Dave has observed as follows:

"Once the decree was passed in favour of the appellant-plaintiff the executing court should not have looked into other reports which had been submitted to it afterwards. The executing court ought not to have considered other factors and facts which were not forming part of the judgment and the decree passed in favour of the appellant-plaintiff. The executing court ought to have looked at the sketch which was prepared by the Local Commissioner and which was accepted as a correct sketch by the appellate Court while delivering the judgment which became final. The High Court was also not right while confirming the order passed by the executing Court for the reason that the executing court had taken into account certain other reports for the purpose of rejecting the execution proceedings and for coming to the conclusion that the decree was not executable.

It is really agonizing to learn that the appellant- decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant- plaintiff had finally succeeded in January, 1996. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that the difficulties of a litigant in India begin when he has obtained a decree. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. There should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain."

19. Insofar as this Case is concerned, as rightly argued by Mr.N. Manokaran, it is trite law that a Trust property cannot be sold. Insofar as the execution proceedings in E.P.No.9 of 2001 is concerned, the alleged Will is nothing to do with the suit in O.S.No.214 of 2000. The decree obtained by the first respondent in O.S.No.214 of 2000 will definitely bind upon the second respondent as he was in actual possession of the suit property. The right of alienation of the suit property by the said Dhanalakshmi was rejected by the District Munsif in O.S.No.242 of 1998 filed by the said Dhanalakshmi and thereby her prayer for declaration to declare that she was the managing trustee was also rejected on 15.12.2001. Keeping in view of the above facts, this Court finds that the impugned order itself is well within the bounds of law which according to this court does not require any interference of this Court to exercise its revisional jurisdiction.

In the result, the civil revision petition is dismissed. However, there shall be no order as to costs.

18.10.2016

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Internet: Yes
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To

The District Munsif
Thiruchengode

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