

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2083 of 2006

P.Thirumani

.. Appellant

Versus

1.Dharmaraja Pillai Thaneer Pandal
Inam Trust, Ayanavaram Village,
rep. by its Trustee
C.K.Jayaraman

2.Ravi

3.Rosammal

4.Madurai

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 21 Rule 103 of C.P.C.
against the decree and decretal order dated 05.06.2006 passed in E.A. No.3730
of 2005 in E.P. No.1389 of 2004 in O.S. No.7381 of 1997 on the file of the IX
Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Chidambaram

For Respondents : Mr.M.Venkateswaran for R1
No appearance for R2 to 4

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the impugned decretal
order dated 05.06.2006 passed in E.A. No.3730 of 2005 in E.P. No.1389 of 2004

in O.S. No.7381 of 1997 on the file of the IX Assistant Judge, City Civil Court, Chennai.

2.Learned counsel appearing for the appellant would submit that the learned Executing Court had failed to consider that the petition for removal of obstructors is not maintainable on the ground that the appellant and his predecessors were not parties to the suit in O.S. No.7381 of 1997. When the land in question has been occupied by the appellant and patta also has been issued in his name and the same has been in his possession and enjoyment for more than four decades, the learned Court below, without considering the fact that the Surveyor of Perambur-Purasawalkam has never inspected the suit property along with Court Amin, has wrongly come to the conclusion that the appellant is one of the obstructors. Adding further, learned counsel for the appellant would submit that the respondents have at no point of time let in any oral or documentary evidence either before the surveyor or the Amin to prove their claim and therefore the learned Trial Court ought not to have passed the impugned order, as the respondents cannot establish the alleged encroachment of the suit property. When the respondents have filed the suit and subsequently obtained a decree with regard to the property covered in Survey No.58 belonging to the appellant, the respondents at no point of time had established their right, title and interest to the property in question. He

would further submit that when there was a clear patta marked as Ex.R2 showing the appellant's vendor as the owner of the property in question, the learned Court below has wrongly come to the conclusion that the obstructors failed to identify their portion of the property. On this score, as the respondents have not mentioned the specific area and proper identification of property in question, learned Court below has given a finding that the obstructors have obstructed an area having 18 x 115 sq.ft. of land by accepting wrong averments made by the respondents. Therefore, the impugned decretal order is liable to be set aside.

3.Opposing the above contentions, learned counsel appearing for the respondents would submit that when the suit for recovery of property covered in Survey No.84 was filed against the defendant, she remained exparte and therefore the learned Trial Court setting her exparte, proceeded with the enquiry and finally passed a decree. Thereafter, when the first respondent, being a decree holder, has gone to execute the property, the appellant, who has nothing to do with the land covered in Survey No.84, as they are the owners of the property covered in Survey No.58, have created obstruction from executing the decree passed by the competent Civil Court. Therefore, the first respondent was constrained to approach the learned Trial Court/Executing Court. Although the appellant herein appeared before the Execution Court,

there was no document or acceptable evidence produced to show that the first respondent carrying a decree, attempted to encroach into the property, belonging to the appellant said to be covered in Survey No.58. When there was no oral or documentary evidence produced before the Trial Court/Executing Court, the Court below has rightly found the contentions placed before the Court are fully devoid of any merit. On this basis, the impugned decretal order was passed, therefore, at this stage as the appellant is the owner of the property covered in Survey No.58, they cannot stand as obstructors in executing the decree obtained in regard to the land covered in Survey No.84 having a clear identification of the property.

4.I find some merits on his submissions. When the appellant appeared before the Execution Court, the learned Court below has recorded his evidence which shows that the appellant has no clear title whatsoever on the property covered in Survey No.84. When the appellant has taken a stand that they have nothing to do with the Survey No.84, for which a decree has been passed, had they been aggrieved by any encroachment sought to be made by the decree holder in their property covered in Survey No.58, they could have produced their document to show that taking the strength of the decree obtained with regard to the property covered in Survey No.84, the respondents are trying to take away the appellant's property. But no such case was made out by the

appellant. Secondly, even at the time of facing the risk of losing at the hands of the first respondent armed with the decree passed by the competent Civil Court, nothing prevented them to move before the competent civil court for appropriate remedy namely for declaration of title whatsoever. Therefore, this Court is not inclined to find any merit in the appeal and hence the same fails and dismissed. No costs.

22.09.2016

Index : Yes / No
vga

To

1.The IX Assistant Judge,
City Civil Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

T.RAJA, J.

vga

C.M.A. No.2083 of 2006

22.09.2016