

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.937 of 2013
and
M.P.No.1 of 2013**

1.Viswanathan (died)

2.Rathinam

3.Balamanickam

4.Kaviprasad

.. Petitioners

Vs.

1.Vishalakshmi Ammal (died)

2.Navaneetham

3.Ambujam

4.Indhirani

5.Mani @ Jayalakshmi (died)

6.Subramaniam

7.Marimuthu (died)

8.Sivalingam

9.Ganesan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order made in E.P.No.23 of 2011, dated 18.09.2012, on the file of the Sub Court, Pollachi, Coimbatore District in O.S.No.143 of 1982, on the file of the Sub Court, Udumalpet, Tirupur District.

For Petitioner : Mr.B.Vijay

For Respondent : Mr.B.Harikrishnan (for R2 and R3)

No Appearance (for R4)

R1, R5 and R7 – Died

R6, R8 and R9 – Not ready in notice

ORDER

The L.R.s of the 1st defendant namely Viswanathan and the respondents 8 to 10 in E.P.No.23 of 2011 are the Civil Revision Petitioners before this Court. Challenging the order in E.P.No.23 of 2011, on the file of the Subordinate Court, Pollachi, Coimbatore District.

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2.The case of the petitioners/L.R.s of the 1st defendant is that the 1st respondent/plaintiff/Visalakshi Ammal, Navaneedham and Ambujam were filed a suit in O.S.No.143 of 1982 against the 1st

defendant and other defendants for partition of the suit schedule of property. The said suit was decreed on 25.01.1985 by the learned Subordinate Judge, Udumalpet.

3.After the preliminary decree, the plaintiff has filed the application in I.A.No.999 of 1986 for passing final decree. Considering the application filed by the plaintiffs, the learned Subordinate Judge, Udumalpet was pleased to passed final decree on 28.11.1997, based on the report filed by the Advocate Commissioner.

4.Pursuant to passing of final decree, the plaintiff has filed R.E.P.No.23 of 2011 on 15.03.2011 before the Executing Court. In the execution petition, the plaintiffs/decreed holders sought for the prayer in the execution petition that the defendants 8, 9 and 10, should pay the amount as per the order in I.A.No.14 of 2009 and if the said payment of amount is not made, the property should be attached by the Court as per Order 21 Rule 66 of CPC and bring the property for auction sale and sale amount may be paid to the plaintiffs.

5.On receipt of the notice in the execution petition, the petitioners who are the respondents 8, 9 and 10 were filed their counter statement. In their counter statement, they are stated that

the petitioners who are the respondents 1, 2 and 3/deed holders/plaintiffs, since they are other legal heirs of the deceased 1st plaintiff namely Visalakshi ammal. Therefore, the petition filed by the plaintiffs 2 and 3 against these petitioners/defendants 8 and 9 are not maintainable.

6. These petitioners, who are the respondents 8, 9 and 10 also states in their counter that the plaintiffs 2 and 3 are in the occupation of the entire suit house properties from the year 1983 and they are resisting these respondents from taking delivery of the possession as per the Court order in E.P.No.50 of 2012, since the petitioners 2 and 3 are in the possession of the entire house properties from 1983, even before they apply for delivery of possession and hence they are not entitled to claim the profits from the properties from these respondents.

7. Apart from this, the respondents who are the petitioners herein stated that a portion of the suit house properties were let to the Telephone Department on a monthly rent of Rs.400/- and it was vacated by the department and the plaintiffs 2 and 3 were instructed the Telephone Department not to pay the arrears amounting to

Rs.14,400/- to the respondents, who are the petitioners herein. Therefore, the said amounts still remains unclaimed because of the non co-operative attitude of the plaintiffs 2 and 3. These petitioners who are the respondents 8, 9 and 10 in the Execution Petition also states that the Execution Petition filed by the petitioners who are the respondents 1, 2 and 3 are barred by limitation and it is not maintainable in the law and the decree holders 2 and 3 were claimed excess amounts and refuse to deliver the properties of these petitioners/respondents 8, 9 and 10. The petition is liable to be dismissed. Therefore, the respondents were sought for the dismissal of the petition filed by the respondents 1 to 3 herein.

8. Considering both side arguments, the learned Subordinate Judge, Pollachi was pleased to allow the application by stating that the respondents 1 to 3 who are the L.R.s of the 1st defendant are entitled the benefits of the amount from the share allotted to the 1st plaintiff. Apart from this, the learned Judge also states that it is made clear that the entire amount after deposit in the Court and these respondents 8, 9 and 10 should wait whether the entire amounts or the share alone be given to the legal heirs are entitled the amount. The learned Judge is directed to the respondents 8, 9 and 10 should

deposit the amount to the Court within a period of one month, on failing the deposit within the stipulated time, the further order to be passed by the Court. Challenging the said order, these petitioners who are the respondents 8, 9 and 10 were filed petition before this Court.

9.I heard Mr.B.Vijay, learned counsel appearing for the petitioners and Mr.B.Harikrishnan, learned counsel appearing for the respondents 2 and 3 and perused the entire records.

10.The petitioners who are the plaintiffs 2 and 3 were filed the Execution Petition in R.E.P.No.23 of 2011 under Order 21 Rule 11 of CPC sought for the prayer directing the respondents 8, 9 and 10 to deposit the amount and attach the property allot share of the property and bring the property for auction sale as per Order 21 Rule 66 of CPC and the sale amounts may be given to the respondents, who are petitioners in R.E.P.No.23 of 2011.

11.It is the case of the petitioners are that the petitioners who are the defendants 8, 9 and 10, should pay a sum of Rs.2,93,526/- as per the judgment and decree in I.A.No.14 of 2009 and attach the property mentioned in the Execution Petition and bring the property for auction sale as per Order 21 Rule 66 of CPC to pay the amount to

the plaintiffs 2 and 3.

12.Originally the suit was filed in the year 1992 and preliminary decree was passed on 25.01.1985 thereafter an application in I.A.No.999 of 1986 was filed for passing final decree, the plaintiffs 2 and 3 were filed E.P. on 15.03.2011, i.e. after 14 years the Execution Petition was filed.

13.As per the provisions Order 20 Rule 12 (1)(c)(iii) of CPC, the Execution Petition should be filed within 3 years, the provision Order 20 Rule 12 says as follows:

"12.Decree for possession and mesne profits.-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a)for the possession of the property;

[(b)for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba)for the mesne profits or directing an inquiry as to such mesne profits;]

(c)directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i)the delivery of possession to the decree-holder,

(ii)the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii)the expiration of three years from the date of the decree, whichever event first occurs,

(2)Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

14.As per the Order 20 Rule 12(1)(c)(iii) of CPC, it is stated that the expiration of three years from the date of the decree, whichever event first occurs. When the provision Order 20 Rule 12(1)(c)(iii) CPC says that from the date of decree, E.P. should be filed within 3 years for delivery of possession and also directing an inquiry as to rent or mesne profits from the institution of the suit until, but the case on hand, the preliminary decree was passed on 25.01.1985 and final decree was passed on 28.11.1997, the E.P. was filed on 15.03.2011

i.e. after 13 years 4 months.

15. Normally in regular suits, if a decree has been passed, that should be executed within 12 years, but in the case on hand this Execution Petition was filed after 14 years, even though the provision Order 20 Rule 12(1)(c)(iii) CPC prescribed for 3 years and the learned Subordinate Judge, Pollachi, without gone through the limitation had simply passed the orders, when this petitioners who are the respondents 8, 9 and 10 were raising the ground of limitation, that was not discussed by the learned Judge.

16. Even as per Section 182 of the Limitation Act, the decree holder ought to have filed the application for Execution within 3 years from the date of decree of the Civil Court. But, the final decree was passed in the year 1997 whereas the Execution Petition was filed in the year 2011, i.e. after 14 years.

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17. The learned Judge without noting the limitation and simply has allowed the Execution Petition filed by the petitioner in E.P.No.23 of 2011 on 18.09.2012, therefore, the very order passed by the learned Judge in the Execution Petition in E.P.No.23 of 2011 dated

18.09.2012 is totally lack on all aspects.

18.It is made appropriate that the Execution Court while considering the Execution Petition filed by the decree holders, the Executing Courts must have note the limitation at the first instance and thereafter to pass orders, but in this case, the learned Subordinate Judge, Pollachi has miserably failed on his part to note down the limitation and allowed the Execution Petition in favour of the plaintiffs 2 and 3/ decree holders. Therefore, it is just and necessary, this Court warranting interference of the orders passed by the learned Subordinate Judge, Pollachi, in E.P.No.23 of 2011 dated 18.09.2012 and the same is liable to be dismissed.

19.In the result, this Civil Revision Petition is allowed by setting aside the order passed in E.P.No.23 of 2011, dated 18.09.2012, on the file of the learned Sub-Court, Pollachi, Coimbatore District in O.S.No.143 of 1982, on the file of the Sub-Court, Udumalpet, Tiruppur District. No costs. Consequently, connected miscellaneous petitions are closed.

21.08.2017

vs

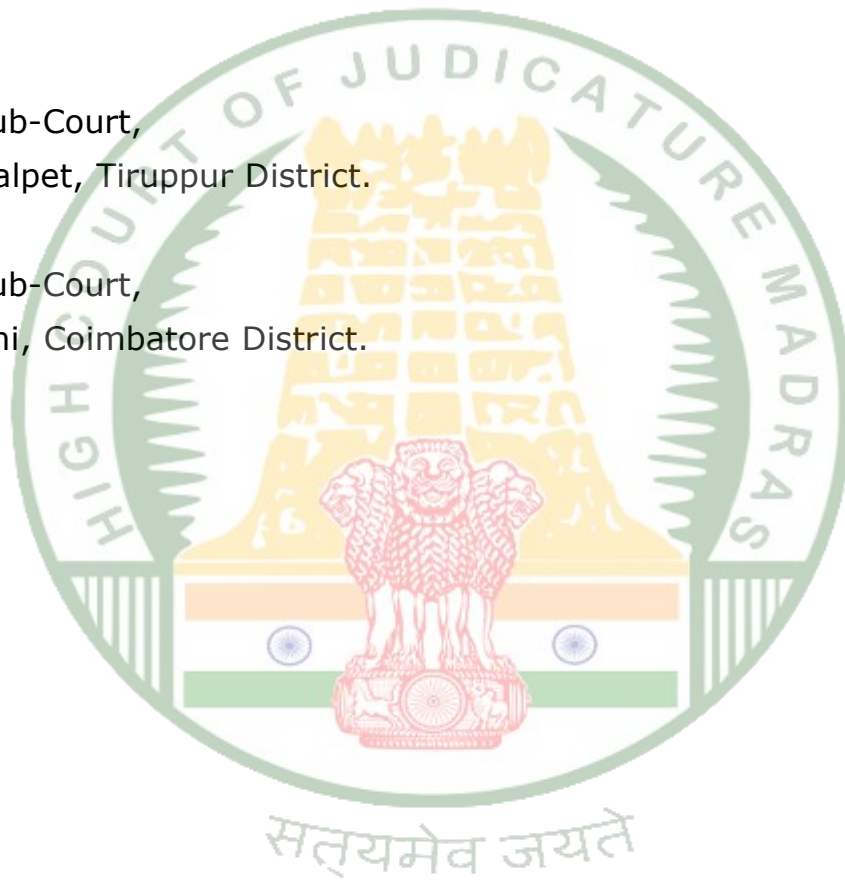
Index:Yes

Speaking order

To

1.The Sub-Court,
Udumalpet, Tiruppur District.

2.The Sub-Court,
Pollachi, Coimbatore District.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery order made in
CRP(NPD).No.937 of 2013
and
M.P.No.1 of 2013**

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