

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1563 & 2330 of 2011
& C.M.P.Nos.18242 & 18243 of 2017
& M.P.Nos.1 & 1 of 2011

C.R.P(NPD).No.1563 of 2011

Valleesan Pillai

.. Petitioner

Vs.

A/M.Thiruvaduthurai Adheenam
Rep. By the Adheena Kartha
Srilasri
Pandara Sannadhi
Thiruvaduthurai

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order and decretal order dated 03.03.2011, made in E.A.No.8 of 2006 in O.S.No.89 of 1989 on the file of the Subordinate Court, Chidambaram.

For Petitioner

: M/s.Bhagavth Krishnan PMN
for M/s.R.Ramesh

For Respondent

: Mr.K.Chandrasekaran

C.R.P(NPD).No.2330 of 2011

A/M.Thiruvaduthurai Adheenam
Rep. By the Adheena Kartha
Srilasri
Pandara Sannadhi
Thiruvaduthurai

.. Petitioner

Vs.

Valleesan Pillai

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order and decretal order dated 03.03.2011, made in E.A.No.1 of 2008 in E.A.No.175 of 2007 in E.A.No.8 of 2006 in E.P.No.65 of 2006 in O.S.No.89 of 1989, on the file of the Subordinate Court, Chidambaram.

For Petitioner : Mr.K.Chandrasekaran

For Respondent : M/s.Bhagavth Krishnan PMN
for M/s.R.Ramesh

COMMON ORDER

The Civil Revision Petition in C.R.P.No.1563 of 2011 is arising out of the order passed by the Sub-Court, Chidambaram in E.A.No.8 of 2006 in E.P.No.65 of 2006 in O.S.No.89 of 1989 dated 03.03.2011 dismissing the application filed by the judgment debtor under Section 47 of CPC.

2. The Civil Revision Petition in C.R.P.No.2330 of 2011 is arising out of the order passed by the Sub-Court, Chidambaram in E.A.No.1 of 2008 in O.S.No.898 of 1989 dated 03.03.2011,

appointing Advocate Commissioner in the application filed by the respondent/judgment debtor to ascertain the value of building with the help of engineer.

3. The issues involved in both the Civil Revision Petitions are interlinked, therefore disposed of by this common order.

4. The petitioner in C.R.P.No.2330/2011 is the plaintiff, who filed a suit in O.S.No.89 of 1989 on the file of the Subordinate Court, Chidambaram against the petitioner in C.R.P.No.1563/2011, who is the first defendant/judgment debtor and three others for the relief of recovery of possession and recovery of sum of Rs.16,791.40/- together with subsequent interest and Rs.1,500/- per year as damages. By the judgment and decree dated 17.02.1995, the suit was decreed with regard to the arrears of rent only. The relief of eviction was dismissed. The plaintiff filed A.S.No.114 of 1995 and first defendant filed A.S.No.46 of 1995 and subsequently they filed S.A.No.863 of 2005 and S.A.No.1763 of 1997 respectively. This Court dismissed the second appeal filed by the first defendant and allowed the second appeal filed by the plaintiff and granted decree of eviction also. The plaintiff filed

E.P.No.65 of 2006 for eviction of the defendants in O.S.No.89 of 1989. The first defendant filed E.A.No.8 of 2006 in O.S.No.89 of 1989 under Section 47 C.P.C, claiming a sum of Rs.30,00,000/- from plaintiff on the ground that he has put up superstructure in the land. The plaintiff is liable to pay this amount before evicting the defendant. The plaintiff filed counter affidavit and opposed the said application on the ground that the application filed by the first defendant is not maintainable under Section 47 C.P.C. There is no decree in favour of the first defendant, entitling the first defendant to compensation. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the E.A.No.8 of 2006.

5. One Natanam and 7 others filed E.A.No.175 of 2007 under Order 21 Rule 35 Read with Section 151 C.P.C, claiming to be the legal heirs of Moorthypillai, elder brother of first defendant, for half share in the suit property and prayed for passing an order, directing the plaintiff to take symbolic possession of half share in the suit property. The first defendant filed E.A.No.1 of 2008 in E.A.No.175 of 2008 for appointment of qualified engineer or to appoint an Advocate Commissioner with power to take help of qualified engineer to measure the suit property, value of the

building standing in the suit property and file report with plan. According to the first defendant, as per the Section 34 (c) of Hindu Religious and Charitable Endowment Act, 1959, he is entitled to claim value of the building put up by him in the site. He has filed application under Section 47 C.P.C for the said relief. The plaintiff also filed counter affidavit in the said application.

6. The learned Judge, by the order dated 03.03.2011, dismissed the E.A.No.8 of 2006 filed by the first defendant, holding that the said application under Section 47 is not maintainable and granted permission to the first defendant to file additional counter in E.P filed by the plaintiff. The learned Judge on the same day, appointed Advocate Commissioner in E.A.No.1 of 2008 filed by the first defendant to measure the suit property, value the property with assistance of competent engineer and file his report.

7. Against the order dated 03.03.2011, made in E.A.No.8 of 2006, the first defendant filed C.R.P.No.1563 of 2011.

8. Against the order dated 03.03.2011, made in E.A.No.1 of 2008, plaintiff filed the C.R.P.No.2330 of 2011.

9. The learned counsel for the parties have reiterated the averments in affidavits, counter affidavits and grounds in Civil Revision Petitions. Heard the learned counsel appearing for the parties and perused the materials available on record and judgments relied on by the counsel for the parties.

10. The learned counsel appearing for the petitioner in C.R.P.No.1563 of 2011/first defendant relied on the following judgments reported in:

(i) **MANU/SC/0807/1987** in the case of **Shamma Bhatt and others Vs. T.Ramakrishna Bhatt:**

"11. However, we feel that some equity has to be worked out in this case. This Court issued notice in the S.L.P on 20.06.1972. On 01.09.1972 stay of operation of decree was granted, and an opportunity was given to enable the parties to come to a compromise. On 18.09.1972, this Court directed a Commissioner to be appointed to assess the value of improvements which were made subsequent to the date upto which the compensation for improvements had already been adjudged. It was pursuant to this direction that a report was submitted showing the value of improvements at

more than a lakh of rupees. On 23.02.1973, this Court granted special leave and stayed the operation of the decree on condition that the appellants deposit a sum of Rs.5,000 each year in the Trial Court and permitting the respondents to withdraw the same on furnishing security. On April 1, 1980, this Court passed an order as follows:

Counsel on both sides, after arguments were heard in substantial measure, agreed with us that this was a case pre-eminently fit for settlement. The question of law raised is a ticklish one and the consequences will be 'all or nothing'. The suggestion which appears to be acceptable to counsel on both sides is one of two alternatives, the option to choose being left to the respondent, since he has won in the High Court. The alternatives are:

(a) the appellant is to pay a sum of Rs.50,000 to the respondent in addition to the respondent being entitled to withdraw an amount of Rs.30,000 plus Rs.8,000/- and odd lying in deposit to the credit of the suit. In this event, the appeal will stand allowed and the property will be kept by the appellant as owners of the property;

(b) alternatively, the respondent will pay to the appellant a sum of Rs.50,000/- and the appellant will be further entitled to

withdraw a sum of Rs.30,000 plus Rs.8,000 now lying in deposit to the credit of the suit. Thereupon the appellant will surrender possession forthwith to the respondent. The property be kept in the same condition as it is now. Post the matter on Tuesday i.e. 08.04.1980."

(ii) **74 L.W 222 in S.A.No.1184 of 1958** in the case of

Veerappa Naidu Vs. Gopalan:

".....The learned Subordinate Judge has not disagreed with this finding of the trial Court as there is no express finding contra. If this finding of fact is accepted by this Court, and I see no reason why it should not be accepted, the claim for compensation put forward on behalf of the appellant is well founded and supported by the decisions referred to above...."

11. The learned counsel appearing for the petitioner in C.R.P.No.2330 of 2011/plaintiff relied on the judgment reported in

2017 SAR (Civil) 879 in the case of **M/s.Brakewel Automotive Components (India) Pvt. Ltd., Vs. P.R.Selvam Alagappan:**

"19. It is no longer res integra than an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the

limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus inexecutable. An erroneous decree cannot be equalled with one which is a nullity. There are no intervening developments as well as to render the decree inexecutable.

20. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

21. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in **Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and others 1971(1) SCR 66** in essence enunciated that only a decree which is a nullity can be the subject matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt:

"A Court executing a decree cannot go behind the decree between the parties or their representatives, it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

12. In the suit filed by the plaintiff, eviction was ordered in the second appeal filed by the plaintiff. In the judgment of this Court in second appeal, this Court ordered eviction of the defendants and payment of arrears of rent by the first defendant. There is no decree passed by this Court to the effect that first defendant is entitled to compensation for the buildings alleged to have been put up by him. He has not sought for any compensation and not filed any counter claim and has not paid Court fee for his claim. The learned counsel appearing for the plaintiff submitted that the defendant, having failed to make such claim cannot seek compensation of 30,00,000/- in the E.P. This contention has considerable force. For the above reason, the learned Judge, considering the contention of the counsel for plaintiff has rightly

dismissed the E.A.No.8 of 2006 filed by the first defendant as not maintainable under Section 47 CPC. As far as E.A.No.1 of 2008 is concerned, the learned Judge has held that the first defendant is not entitled to maintain the said application under Section 47 C.P.C and the right of first defendant can be decided only in E.P. The learned Judge also held that the first defendant is entitled to raise all the objections raised in E.A.No.1 of 2008 in E.P. Having held so, the learned Judge appointed an Advocate Commissioner to measure the property, get the value of the property and file report on the ground that plaintiff will not be prejudiced by such appointment, but the first defendant will be prejudiced if Advocate Commissioner is not appointed. The reasoning of learned Judge is not valid and contrary to decree passed by this Court in S.A.Nos.863 of 2005 and 1763 of 1997. The learned Judge failed to consider that first defendant did not get any decree for compensation for the superstructure alleged to have been put up by him. It is well settled that the Execution Court cannot go beyond the decree passed by the competent Civil Court. In the present case, this Court passed decree of eviction of defendants and decree directing the first defendant to pay arrears of rent. The learned Judge committed an irregularity and exceeded the power conferred on him by appointing an Advocate Commissioner

and the order is liable to be set aside and is hereby set aside and E.A.No.1 of 2008 is dismissed.

13. In view of the same, the first defendant is not entitled to claim any compensation in the E.P. There is no necessity to measure the suit property and value the same with the help of qualified engineer. Hence, the C.R.P.No.1563/2011 is dismissed and C.R.P.No.2330/2011 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No
gsa

To

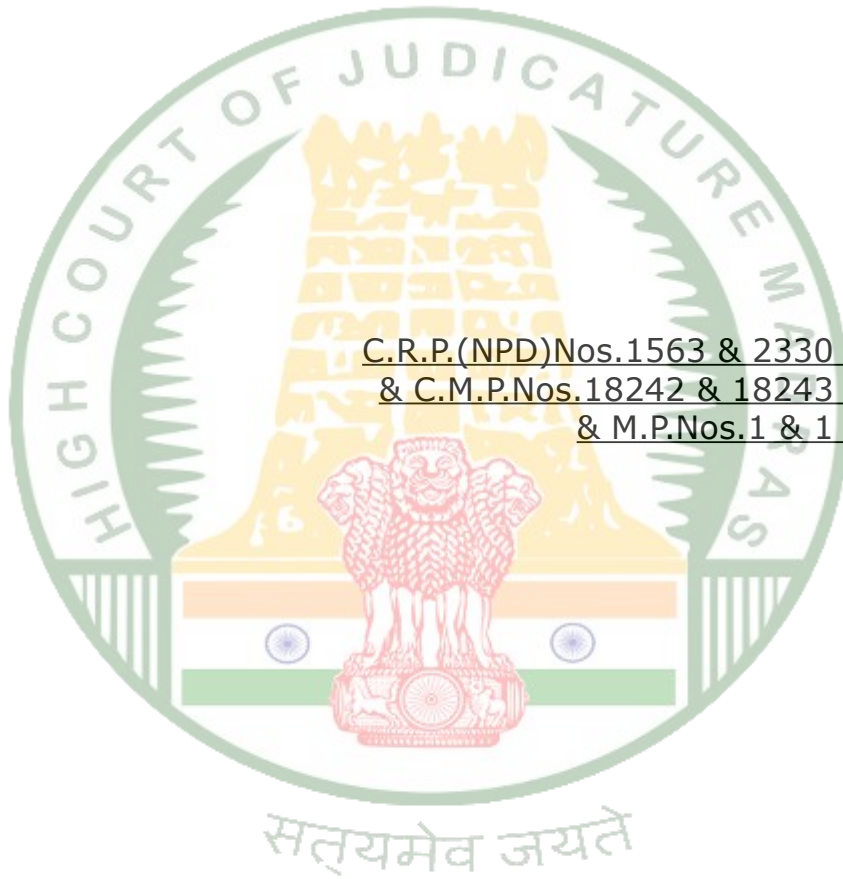
The Subordinate Judge, सत्यमेव जयते
Chidambaram.

25.10.2017

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V.M.VELUMANI,J.

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