

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.09.2016

Pronounced on 04.01.2017

DATED: 04.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1308 of 2012
and
M.P.No.1 of 2012

Kasinatha Padayachi

.. Petitioner

Vs.

Govindasami Padayachi

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order dated 31.01.2012 made in E.A.No.98 of 2010 in E.P.No.29 of 2002 in O.S.No.154 of 1985 passed by the District Munsif, Ariyalur.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.S.Janarthanan

ORDER

Heard Mr.R.Thiagarajan, learned counsel appearing for the petitioner and Mr.S.Janarthanan, learned counsel appearing for the respondent.

2.A perusal of records show that the respondent in this Civil Revision Petition, as plaintiff has filed a suit against the petitioner herein in O.S.No.154/1985 before the District Munsif, Ariyalur for Recovery of Possession, past 3 year damages of Rs.3,000/- and for future Mesne Profits Under Order 20 Rule 12 of C.P.C. The said suit was decreed by Judgment and Decree dated 27.11.1987. It is seen from the records that the petitioner herein has filed appeal as against the above said Decree in A.S.No.2/1988 and the same was dismissed on 14.08.1990. But there was no further appeal by the petitioner herein.

3.The respondent herein in order to execute the said decree has filed E.P.No.29/2002 in O.S.No.154/1985 for delivery. The petitioner has filed a detailed counter to the said Execution petition. It is further seen from the records that the petitioner herein filed E.A.No.98/2010 in E.P.No.29/2002 under Sections 47 and 151 of C.P.C prayed that to declare the decree dated 27.11.1987 in O.S.No.154 of 2005 is

unexecutable in E.P.No.29/2002 and dismiss the Execution petition. The respondent herein filed a detailed counter to the said E.A.No.98 of 2010 in E.P.No.29 of 2002.

4.I have carefully considered the rival submissions on either side. The respondent herein after obtaining the decree for possession filed the above E.P.No.29/2002 for delivery. It reveals from the records that the petitioner herein has been filing one after another petition by him and also through his grand children. In order to drag on the delivery, the petitioner herein has filed O.S.No.304 of 2007 against the respondent herein for the very same property and the same was also dismissed on 16.07.2007. The Petitioner herein after making so many attempts and his failure in all the attempts, he finally filed E.A.No.98 of 2010 to declare the decree dated 27.11.1987 in O.S.No.154 of 2005 is unexecutable in E.P.No.29/2002 and dismiss the Execution petition. The petitioner herein has no right to question the merits of the suit and its decree in the execution petition. The petitioner herein having filed his objection to the E.P in the year 2002 itself, wherein he has not raised any objection with regard to the description of property and after enquiry only the executing court has passed an order of delivery of possession, now he has no right at all to

question the same.

5.I have gone through the entire order passed by the Learned Principal District Munsif. The Learned Judge after considering the case in detail, has rightly dismissed the execution application filed by the petitioner herein by holding that the petitioner herein has filed his objection to the E.P.No.29/2002 in the year 2002 itself and thereafter only order of delivery was ordered. The petitioner herein has not filed any appeal as against the order of delivery. The Learned Judge further held that the petitioner herein has no locus standi to question the decree in the execution petition. When the petitioner herein has contested the suit and at that time, he has not raised any objection with regard to the question of alleged wrong description of the property. The learned Judge further clearly held that the Execution Court cannot go beyond the decree. The respondent has produced a citation rendered by this Court in the case of **(S.R.Surendiraraj v. Komalavalli and others)** reported in **2004 (4) MLJ 415**.

6.As rightly find out by the learned counsel for the respondent herein, the petitioner herein has filed E.A.No.98 of 2010 only to drag on the disposal of the execution petition. In view of the foregoing

discussions, this Court does not find any irregularity or illegality in the order passed by the learned Principal District Munsif Court, Ariyalur in E.A.No.98 of 2010 in E.P.No.29 of 2002 warranting interference by this Court and this revision is deserves to be dismissed.

7.Accordingly, this Civil Revision Petition is dismissed. No costs.

04.01.2017

Index:Yes
Internet:Yes

vs

To

The District Munsif,
Ariyalur.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.1308 of 2012
and
M.P.No.1 of 2012

04.01.2017