

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.11.2017
Pronounced on 13.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN
CRP(NPD)No.1812 of 2006
and
M.P.No.1 of 2006

R.Mohankumar

.. Petitioner

-Vs-

1.Janaki
2.Parthasarathi
3.Lakshminarasimhan
4.Rama
5.Jayanthi
6.Vijayalakshmi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 22.11.2006 in CMA.No.46 of 1997, on the file of the learned Additional District Judge, Fast Track Court No.II, Kancheepuram, reversing the order of the learned Principal District Munsif, Kancheepuram in E.A.No.170 of 1979 in E.P.No.132 of 1977 in O.S.No.360 of 1966 dated 30.07.1992.

For Petitioner : Mr.B.Singaravelu

For Respondents : Mr.J.R.K.Bhavanantham
for M/s.P.B.Ramanujam

O R D E R

The present revision has been preferred before this Court against the judgment and decree in CMA.No.46 of 1997 passed by the learned Additional District Judge, Fast Track Court No.II, Kancheepuram who passed a reversional order in E.A.No.170 of 1979 in E.P.No.132 of 1977 in O.S.No.360 of 1966, on the file of the learned Principal District Munsif, Kancheepuram.

2.The brief facts of the present Civil Revision Petition is that the plaintiff Ambulammal has filed a suit in O.S.No.360 of 1966 for recovery of possession. On 25.10.1968 the suit was partly dismissed for recovery of possession and allowed in respect of title of the property. Thereafter, the said plaintiff preferred an appeal suit in A.S.No.192 of 1969 before the learned Subordinate Judge, Kancheepuram and the same was

allowed. Aggrieved by the same the defendants in the original suit had preferred a second appeal in S.A.No.502 of 1971 before this Court and the same was dismissed by the Judgment of this Court dated 08.12.1972.

3.The confirmation of the title and possession devolves upon the plaintiff/decreed holder/ the present petitioner in the Civil Revision Petition. To enjoy the fruits of the decree the petitioner mother who is the original plaintiff have filed an execution petition in E.P.No.132 of 1977. After the delivery was ordered the Court bailiff had executed the Court order by taking the delivery of the suit property. The delivery receipt also was enclosed in the typed set of papers for perusal of this Court.

4.The learned counsel appearing for the revision petitioner submits that the respondents herein did not co-operate for the delivery. Hence, the petitioner filed an application for break open which was ordered with the police aid. The delivery was given to the petitioner. During the course of delivery, the respondents or their father did not make any objection to the bailiff, with respect of delivery of possession or made any complaint against the bailiff with respect of execution of decree. Thereafter, the decree would have executed with the boundaries and accordance with the decree. The learned counsel appearing for the petitioner has relied upon the Judgment of the Hon'ble Apex Court in the case of Subhaga and others Vs Shoba and others cited in (2006) 5 SCC 466, it is stated as follows:

"Once a property has been identified by boundaries, even if there is any discrepancy, normally, the boundaries should prevail - It is not necessary to survey all adjacent lands to find out whether an encroachment was made in property concerned - In present case, Commissioner having identified suit property by

6.The High Court has also upheld the title claimed by the plaintiff over the plot, Plot No.1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging the plaintiff. In this situation, we are satisfied that

the judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate Court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case."

While making submissions in respect of taking delivery within the boundaries, the learned counsel appearing for the petitioner also pointed out the judgment cited in 1997 LW Pg.365:

"Dina Malar Publications a Tamil daily, rep., by its partner, R.Krishnamoorthy Vs. The Tiruchirapalli Municipality, rep. by its Executive Authority, the Commissioner & ors.

Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document; (3) If the recitals in the documents and the circumstances of the case show that a lesser extent only was conveyed than the area covered by boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries."

5.The respondent herein filed an application in E.A.No.170 of 1979 claiming the relief of excess delivery to be redelivered to the respondent /judgment debtors. Subsequent to the delivery receipt, E.A.No.170 of 1979 was filed by K.Srinivasa Vardhan who is the judgment debtor who is the father of the present respondent. The application in E.A.No.170 of 1979 was filed under Order 21 Rule 101, Section 47 and 151 of CPC. It is interesting to note that the schedule of property described in the E.A.No.170 of 1979 does not disclose any survey number, the extent of area required for redelivery. The ambit of the provision of Section 47 of CPC to determine the question of fact to be decided separately without filing any further suit.

6.In compliance of Section 47 of CPC there is no adducing of oral evidence had been filed for redelivery of excess delivery. The learned counsel appearing for the respondent vehemently argued that there is only Room, Verandah and Narasam. However, the schedule of the property has got detailed description in the plaint such as Survey number, Door Number and other particulars and the length and breadth of the extent of area out of which one third was sought for declaration. The application in E.A.No.170 of 1979 is vague and it only speaks about the vacant site in T.S.No.1175 Part and in addition to that a sale deed dated 21.12.1972 was mentioned and no document was stated so till the Civil Revision Petition. The following citation was referred in support of his claim in the case in 2000 AIHC 2118 (Muthurayappa v. Commanding Officer, Yelahanka Air Force, it is stated as follows:

(10) prima facie such an order is not permissible under Section 47 of the CPC. Section 47 contemplates as follows:

"question to be determined by the Court executing decree: (1) all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

(11) in Section 47 the adjustment or otherwise of the decree has to be considered and even if the Court comes to the conclusion the decree has not been properly satisfied, it is the primary duty of the court to see that the warrant is to be reissued and the delivery is made. Therefore, the order is prima facie not sustainable. On facts the Court is under the mistaken impression that there has been to demarcation at all; it is an error apparent on the face of the record. It is not as if the respondent is not aware of the area belonging to the plaintiff which is in his possession. As he was a party to the suit and is certainly not a third party. So long as the defendant is a party to the proceeding and have raised all the objections in the defence, including one of identity of the property, once a decree is passed, it is not open to the defendant to raise a question again before the executing Court. The executing Court is certainly cannot go beyond the decree and that is a settled law. In fact in this case notwithstanding the fact that the judgment debtor is the Commanding officer of the Air Force, a police help was granted by the Court and along with the police help only the delivery was made. Once the delivery was made and the portion has been demarcated by putting the fence. It is certainly not open to the judgment debtor to claim that the delivery is band. In any event, once the delivery is made, execution petition gets terminated and it is certainly not legal for the Court below to go into the actual delivery without resorting to any provisions of law under Order 21. There are provisions for objection to the delivery or obstruction to the delivery. But once without noting obstruction a delivery is made, the remedy of the petitioner is to seek for redelivery of alleged excess portion, if really there be an alleged excess, and if it is otherwise the judgment debtor could have informed the Court the exact portion which belong to the decree holder and which is the subject matter of the suit, in this case, the judgment debtor is not a third party and he was an active participant in the suit. The evidence on record clearly discloses

that the property has been properly identified by the Bailiff with the help of the police. I find the approach made by the executing Court is thoroughly wrong and misapplied the law on the point. The evidence recorded which is extracted above is certainly goes to show that there has been proper compliance of the provisions of the CPC. I am also satisfied that there is no violation of law and the remedy of the judgment debtor has been misconceived. Such a A. is not maintainable under Section 47.

12) Consequently, the Revision Petition is allowed and the I.A. is dismissed, and the delivery already made is confirmed and recorded."

7.The learned counsel appearing for the respondent was vehement and energetic in elucidating the fact by comparing various sketches and tried to convince this Court that the excess land was taken in T.S.No.1175 Part. On perusal of the records, I could not find how much Sq. fts. would have been taken in excess and what is the exact supporting document to content Section 47 application. I am of the view that the learned trial Judge dismissed the application rightly. With these observation without the survey number 1202, 1203. The learned trial Judge has compared with the municipality and the sketch of the Commissioner compared and rightly dismissed the E.A.No.170 of 1979. The learned counsel appearing for the respondent had questioned the adoption of the petitioner and the respondents are eligible as Class II Legal Heir. At any point of the deed of adaption which is shown in the typed set of papers was not challenged by the respondents by way of suit for declaration declaring the deed as null and void. Therefore, the contention of questioning the adoption of Mohankumar cannot be considered at this stage.

8.The learned counsel appearing for the respondent highlighted the Ryotwari Patta dated 07.03.1968 in the name of Srinivasa Varadhan to the extent of 0.03 cents in T.S.No.1175 admeasuring to the extent of 1308 Sq. ft. approximately, whereas the patta was issued by the Settlement Officer, Chengalpet dated 19.04.1968 under Tamilnadu Inam Estate Abolition Act. In such case, once the patta issued by the Settlement Officer, the patta holder deemed to be the title holder of the extent of area. In contra to that the sale deed dated 21.12.1972 it appears that the said document have been executed by one Munusamy and 3 others in favour of one K.Srinivasa Varadhan (his legal heirs are contesting respondents) which is not admissible on the facts. Even assuming the fact that the patta holder/father of the respondents under Inam Abolition Act is the owner of the property, it is not known as to why K.Srinivasa Varadhan obtained Sale deed from vendor with contradictory extents of

area where patta reveals only 0.03 cents, the schedule in the sale deed appears North to South Western side 94½, Eastern Side 94 Feet having extent of 2303 Sq. ft. Both the documents relied by the learned counsel for the respondents are liable to be rejected for the simple ground that the title holder under Ryotwari Patta can purchase from Munusamy Mudaliyar from separate sale deed in the year 1972, all goes under suspicion. Even the Ryotwari Patta was not marked in E.A.No.170 of 1979. However, the contention on both the documents is liable to be rejected. Both the Ryotwari Patta and 1972 sale deed in favour of one K.Srinivasa Varadhan contradicts with each other. A owner of the property cannot hold two title documents such as Ryotwari Patta and subsequent sale deed in the year 1972 from the vendor. Both the document does not support the respondents at any point of time which has been refused in the ground No.37 of CRP.

9. Against the dismissal order in E.A.No.170 of 1979 a Civil Revision Petitioner had been preferred a revision petition in CRP.No.788 of 1993 and the same is returned for preferring appropriate appeal. In view of the said direction, C.M.A.No.46 of 1997 had been filed before the learned Additional District Judge, Fast Track Court No.2, Kancheepuram. The learned Additional District Judge, Fast Track Court No.2, Kancheepuram, has allowed the Civil Miscellaneous Appeal in CMA.No.46 of 1997 filed by the respondent on 22.11.2006 by reversing the order of the learned Principal District Munsif, Kancheepuram, in E.A.No.170 of 1979 in E.P.No.132 of 1977 in O.S.No.360 of 1966 dated 30.07.1992. Challenging the said order in CMA.No.46 of 1997, dated 22.11.2006, this petitioner has filed the present Civil Revision Petition before this Court.

10. I heard Mr.B.Singaravelu, learned counsel appearing for the petitioner and Mr.J.R.K.Bhavanantham for M/s.P.B.Ramanujam, learned counsel appearing for the respondents and perused the entire records.

11. It is the case of the petitioner is that though the learned Appellate Court namely, the learned Additional District Judge, Fast Track Court No.2, Kancheepuram, has made a lengthiest judgment, but failure to notice the necessary requirement for redelivery of the above was not provided by the respondents. He has also making submissions that while allowing the CMA, the learned Judge after detailed discussion failed to find out how much area or Sq. ft., extent of area was described. The detailed discussion is beyond the scope of the application filed by the respondent /Judgment debtor even assuming it was taken by way of arguments advanced by the learned counsel. The ambit of the decree has to be executed by the trial Court and a mere application for redelivery of excess of property with improper schedule is liable to be rejected on the initial stage. However, the application, CMA, the present E.A. have travelled

for a period of 39 years successfully prolonged by the respondent. While making submissions in respect of decree to be confirmed without any hindrance, the learned counsel for the petitioner circulated the case in (2010) 5 MLJ 382, it is stated as follows:

"IN THE HIGH COURT OF JUDICATURE AT MADRAS

Present:M.Venugopal, J.

C.R.P.(NPD)No.1225 of 2007 and M.P.No.1 of 2007

May, 2010, Ramachandran v. Sankaraiah Naidu

"an Executing Court is duty bound to give effect to the Decree in its substance and must not pass any order rendering the judgment of the trial Court as an otiose one and in that view of the matter, inasmuch as Ex.P1 Settlement Deed dated 28.11.2002 after passing of the Decree dated 11.06.2001 certainly the said document was executed by the Deceased Mother of the Civil Revision Petitioner (Judgment Debtor) in his favour only with the view to deprive the Respondent/Decree Holder in enjoying the fruits of the Decree and it is well settled principle of Law that a specific performance decree obtained by a Litigant/Party implies the Decree for possession and as such, the Civil Revision Petitioner cannot lay a claim as per Ex.P1 Settlement Deed dated 28.11.2002 which is non est in Law".

12.Therefore, the learned counsel appearing for the petitioner argued that the order in CMA.No.46 of 1997 is liable to be set aside as there is no excess delivery in E.P.No.132 of 1977 in O.S.No.360 of 1966, on the file of the learned Principal District Munsif, Kancheepuram, prayed to confirm the order in E.P.No.132 of 1977 passed by the learned Principal District Munsif, Kancheepuram.

13.Per contra, the learned counsel appearing for the respondents has argued that the Ryotwari patta dated 07.03.1968 was issued in the name of Srinivasa Varadhan to the extent of 0.03 cents in T.S.No.1175 ad-measuring to an extent of 1308 Sq. ft. approximately, and the patta was issued by the Settlement Officer, Chengalpet, dated 19.04.1968 under the Tamilnadu Inam Estate Abolition Act. If the patta has been issued by the Settlement Officer, the patta holder deemed to be the title holder of the extent of area.

14.He has also vehemently opposed the Civil Revision Petition that the excess land was taken in T.S.No.1175 for part only. The learned counsel appearing for the respondents has produced several judgments by settling that the E.P. should not be questioned by way of under Article 227 of the Constitution of India. To support his case, the learned counsel appearing for the respondents has produced the following judgments:

(1) (2010) 9 SCC 385 (Jai Singh and others v. Municipal Corporation of Delhi and another)

"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

(2) (2006) 5 SCC 466 (Subhaga and others v. Shobha and others)

"Civil Procedure Code, 1908 - Or. 26 Rr. 9 and 10 - Identification of immovable property on Commission - Proper mode for - Interference with, by appellate court - When warranted - Held, a property can be identified either by boundaries or by any other specific description - Once a property has been identified by boundaries, even if there is any discrepancy, normally, the boundaries should prevail - It is not necessary to survey all adjacent lands to find out whether an encroachment was made in the property concerned - In present case, Commissioner having identified suit property by boundaries, and trial court and first appellate court having accepted the same in light of admissions of one of the

defendants, High Court in second appeal erred in interfering with the same only on the basis of vague and general reasons, on ground that all adjacent properties should have also been surveyed - On facts, there was nothing to show that Commissioner had not properly identified the suit property - Property Law - Identification of property - Proper mode for."

5. We find that a commission was issued for demarcating the suit Plot No. 1301/1 Ba and the Commissioner showed the disputed area in the map prepared by him. The lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the defendants as DW 1 and the report and plan submitted by the Commissioner. That court also noticed that the plaintiff had given specific boundaries of the suit land and it was clear from the sketch prepared by the Commissioner that the disputed constructions lay in the suit land and that it belonged to the plaintiff. This was the basis of the affirmance of the decree in favour of the plaintiff by the lower appellate court. In the second appeal, the learned Judge of the High Court, after referring to the description of the boundaries in the plaint, simply discarded the sketch prepared by the Commissioner in the presence of the parties after ascertaining the plots lying as boundaries of the suit property. It also appears to have taken the view that without a survey of the adjoining plots, it cannot definitely be said that the disputed structure lies in the plot belonging to the plaintiff, namely, Plot No. 1301/1 Ba. We think that the High Court was not justified in interfering with the finding of the lower appellate court and in discarding the identification made by the Commissioner. It must be noticed that the suit had been remanded twice for the purpose of identifying the suit property and such identification had been done by the Commissioner and such identification had been accepted by the trial court and the first appellate court in the light of the admissions of DW 1. The vague and general reasons given by the High Court for interfering with the decision of the first appellate court are clearly insufficient to upset the finding on identification. There was nothing to show that the Commissioner had not properly identified the suit property.

6. The High Court has also upheld the title claimed by the plaintiff over Plot No. 1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear

that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case."

(3) (2010) 1 MLJ 423 (Selvanatha Rock v. Union of India rep. by the Secretary to Government (Revenue) Pondicherry and Others.)

"11. In the evidence of R.W.1, the claimant, he had categorically spoken to the fact that he was having possession of 3 Mahs of land in S.No.153/2B and out of the said 3 Mahs, an extent of 2.34 Mahs alone were acquired. He would also speak to the effect that there is nobody claiming the said property and he was the owner of the entire extent in S.No.153/2B as per partition deed Exhibit B-1. The lower Court had not considered the extent of land given as 3 Mahs which is equivalent 300 Kuzhies. However, an extent of 21A and 80 Ca of land were alone found to have been entitled to the claimant. The said decision of the lower Court is patently wrong since there are two more different extent of lands given in the said document. Exhibit B-1 was marked in order to find out the true owner and ownership of the balance extent of 9 A 40 Ca out of the acquired lands. The description of the property ought to have been carefully understood. Fortunately, distinct and definite boundaries are given in the said document. It is a settled law from the period of privy council till today that the boundaries would prevail over the measurement or a S. Nos whenever controversies have been raised in respect of the extent of land in the property. Recently, the Hon'ble Apex Court has laid down the said position of law firmly in the case between Subhaga v. Shoba (2006) 5 SCC 466 : (2007) 7 MLJ 826. The relevant passage would run as follows at p.828 of MLJ:

"6. ... A property can be identified either by boundary or by any other specific description. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff."

(4) 2007 (1) TLNJ 57 (Civil) (Thiruvengadachari, represented by his power of Attorney Agent R.Villalan v. 1.Nagarajan, 2.Kaliyaperumal)

"9.The fourth reasoning of the appellate Court for setting aside Exs.A1 and A2 is that the extent mentioned in Exs.A1 and A2 exceeds by one acre 12 cents to that of the property scheduled to the plaint. But in Exs.A1 and A2 four boundaries have been given. Even if there is any discrepancy in the extent, only the boundary will prevail."

(5) (1998) 4 SCC 543 (Shreenath and Another v. Rajesh and others)

"10.Under sub-clause (1) Order 21 Rule 35, the executing court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21 Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21 Rule 97 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through judgment-debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree-holder, in such a case, may make an application to the executing court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the

executing courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with provisions contained hereinafter. This refers to Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstruction by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.

11. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger."

(6) AIR 2002 SC 251 (N.S.S. Narayana Sarma and others v. M/s. Goldstone Exports (P) Ltd. and others)

"16..... In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution Court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section."

All these judgments only put forth that the Executing Court whether the questions raised by the resister or the obstracter must legally arise between those parties.

15.This Court and the Hon'ble Apex Court very categorically held that in number of cases that the Executing Court cannot go beyond the decree and the Executing Court must to execute the decree. The learned counsel appearing for the petitioner has produced the judgment cited in (2006) 5 SCC 466 in para-4 would clearly says that

Once the property has been identify by boundaries, even if there is any discrepancy, normally, the boundaries should prevail. It is not necessary to survey all adjacent lands to find out whether an encroachment was made in property concerned.

16.It is my absolute view that in compliance of Section 47 of CPC, filed by the petitioner, there was no adducing of oral evidence had been filed for re-delivery of excess delivery.

17.It is the case of the petitioner is that the petitioner is entitled to take delivery of 66 $\frac{1}{4}$ ' north to south and 25' east to west which included the Room, Verandah, Narasam, well and adjacent backyard and the Narasam from street upto the extreme southern side to reach the latrine and backyard.

18.Though the original decree was passed on 25.10.1968 and the Second Appeal was dismissed by this Court filed by the defendant in S.A.No.502 of 1971 on 08.12.1972 and the E.P. was filed by the plaintiff in the year 1977. After the delivery was ordered by the Executing Court bailiff had executed the Court order for taking the delivery of the suit property and the delivery receipt was also enclosed in the typed set of papers for perusal of this Court and at the time of delivery either the respondents or their father did not make any objection to the bailiff, with respect of delivery of possession or made any complaint against the bailiff with respect of execution of decree. But, thereafter only the application in E.A.No.170 of 1979 was filed that claiming the relief of excess delivery of property. Though the learned Executing Court has dismissed the application which was reversed by the learned Additional District Judge, Fast Track Court No.2, Kancheepuram, which is totally against the law, since there was no excess delivery was made in E.P.No.132 of 1977 in O.S.No.360 of 1966 and the Executing Court only to execute the decree and schedule of property was delivered to the petitioner/plaintiff.

19.The order of the learned Additional District Judge, Fast Track Court No.2, Kancheepuram, in CMA.No.46 of 1997 dated 22.11.2006 warranting interference by this Court and accordingly, the same is liable to be set aside by confirming

the order in E.A.No.170 of 1979.

20.In the result:

(a) this Civil Revision Petition is allowed by setting aside the Fair and Decreetal order in CMA.No.46 of 1997, dated 22.11.2006, on the file of the learned Additional District Judge, Fast Track Court No.II, Kancheepuram, reversing the order of the learned Principal District Munsif, Kancheepuram, in E.A.No.170 of 1979 in E.P.No.132 of 1977 in O.S.No.360 of 1966 dated 30.07.1992;

(b) the learned Principal District Munsif, Kancheepuram, is directed to pass appropriate orders in E.P.No.132 of 1977 in O.S.No.360 of 1966, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Additional District Judge,
Fast Track Court No.II, Kancheepuram.

2.The Principal District Munsif,
Kancheepuram.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.P.B.Ramanujam Advocate sr 88770
+1 cc to Mr.B.Singaravelu Advocate sr 89341

CRP (NPD) No.1812 of 2006
and
M.P.No.1 of 2006

ssd(co)
aa22/01/2018