

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2826 of 2013

1.Parameswari
2.Karthic
3.Balaji

.. Petitioners

Vs.

1.Kandan
2.Sivagami Ammal (died)
(Memo filed by the 1st respondent. R1 is
recorded as the legal representative of
the deceased R2, vide order of Court
dated 07.07.2015 in CRP.No.2826 of 2013)
3.Seerala Gounder (died)
4.Lalitha Ammal
5.Nagaraj (Died)
6.Velayudham
7.Jayasankar
8.Minor. Thandapani (died)
9.Velmurugan
10.Ammu
11.Jayalakshmi
12.Jamuna
13.Ekambari
14.Babu @ Selvaraj @ Mohan (Died)
15.Suresh
16.Thatchayani
17.Lakshmi
18.Minor. Gowthaman
(Respondents 3 to 18 are given up)

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the

Constitution of India, against the order passed in E.P.No.39 of 2012 in O.S.No.22 of 2004 order dated 26.04.2013, on the file of the District Munsif, Ranipet, Vellore District.

For Petitioners : Mr.K.Mohanamurali
For Respondents : Mr.A.Gouthaman (for R1)
R2 (Died)
R3, R5, R8 and R14 – Given up
No Appearance (for R4,R6,R7,R9,
R10 to R13, R15 to R18)

ORDER

The respondents 17 to 19 and judgment debtors in E.P.No.39 of 2012 in O.S.No.22 of 2004 on the file of the District Munsif Court, Ranipet, is the civil revision petitioners before this Court, challenging the order passed in E.P.No.39 of 2012 in O.S.No.22 of 2004, dated 26.04.2013, on the file of the District Munsif Court, Ranipet.

2.The case of the civil revision petitioners is that they are the defendants 17 to 19 in O.S.No.22 of 2004, on the file of the District Munsif Court, Ranipet and the suit in O.S.No.22 of 2004 has been filed for partition among the co-sharers and the respondents 4 to 18 are the defendants ranked as respondents 3 to 11 and as well as 13 to 16 in the suit. Originally the said suit in O.S.No.22 of 2004, the Sub-Judge, Ranipet has passed a preliminary decree on 28.02.1992 and later on the said suit was transferred to District Munsif Court, Ranipet for want of pecuniary jurisdiction and on 31.01.2011 the

District Munsif Court, Ranipet was pleased to pass the final decree.

3. In respect of the various schedule of properties in the suit, these petitioners who are ranked as defendants 17 to 19 in the suit are allowed to 8/18 share since the 12th defendant in the suit was died and he was substituted by the legal heirs as defendants 17 to 19. Challenging the order of the final decree passed by the learned District Munsif Court, Ranipet on 31.01.2011, these petitioners have filed an appeal along with the condonation of delay in I.A.No.18 of 2013 before the learned Sub-Judge, Ranipet and the same is pending.

4. After passing the final decree, the respondents were filed E.P.No.39 of 2012 for delivery of the property as allotted in the final decree. Originally, the said E.P. was set ex parte against these petitioners, since they were not appeared on 14.12.2012 before the learned District Munsif Court, Ranipet, therefore, an ex parte order was passed against the petitioners. On knowing about the same, the petitioners were filed E.A.No.2 of 2013 for setting aside the ex parte order dated 14.12.2012. The set aside application was allowed on 22.01.2013 and the E.P.No.39 of 2012 was posted for hearing. But, even without giving any opportunity, but the petitioners, who are the said judgment debtors in the E.P., the case was posted on 23.01.2013, 11.02.2013, 22.02.2013, 01.03.2013 and 15.03.2013

and finally without hearing these petitioners, the learned District Munsif posted the case "for orders" on 22.03.2013. But, later on the case was posted on 03.04.2013 and 12.04.2013, but on 12.04.2013 the learned District Munsif was not sitting, hence the case was posted on 26.04.2013 for clarification and on the said date the learned District Munsif was passed an order as follows:-

"Clarification. Clarification is heard that IInd Item is not allotted to Decree Holder Delivery by call on 28.06.2013."

Challenging the said order dated 26.04.2013 in E.P.No.39 of 2012, these petitioners have filed the present civil revision petition before this Court.

5.The learned counsel appearing for the 1st respondent argued that originally the suit was filed in O.S.No.11 of 1985 before the learned Sub-Judge, Vellore on 21.06.1983.

6.The husband of the first petitioner and the father of the petitioners 2 and 3 herein were shown as 12th defendant in the above suit and they were filed written statement on 02.11.1985. The 1st respondent also states that the dispute between the parties has been started 31 years ago.

7.Later on, the said suit was transferred to the District Court, Vellore and re-numbered as O.S.No.32 of 1991 and the said suit was again transferred to the learned Sub-Court, Ranipet and re-numbered as O.S.No.97 of 1991. After trial, on 28.02.1992 the learned Sub-Judge, Ranipet was passed preliminary decree in which the Sub-Judge, Ranipet allotted 6/18th share to the 1st respondent, 2/18 share to 2nd respondent, 11th respondent allotted 2/18th share and 8/18 share had been allotted to 12th respondent and the petitioners herein are the legal heirs of the 12th defendant.

8.The 1st respondent also states that later on the suit has been transferred to the learned District Munsif Court, Ranipet and final decree application was taken up for hearing and final decree was passed on 31.01.2011. Thereafter, the 1st respondent has filed Execution Petition in E.P.No.39 of 2012 on 24.09.2012 and the said petitioners are not appeared on 21.12.2012. Hence, they were set exparte. The petitioners were filed E.A.No.2 of 2013 for setting aside the exparte order dated 31.01.2011. Later, on 11.01.2013, the set aside application was allowed and for hearing both sides, the Court was posted the matter for delivery on 28.06.2013. Later on, these respondents were filed the petition for break open petition and police help and the said petition was ordered and fresh delivery and posted

the matter on 02.08.2013. In the meantime, on 12.07.2013, the petitioners/decreed holders were filed an application to advance the hearing of the case and to record delivery of possession, since on 12.07.2013 the actual possession was taken by the decreed holder and the present civil revision petition only filed on 24.07.2013 even the stay could be obtained even subsequent to that.

9.The respondents/decreed holders also stated that though the suit was initiated before 31 years, but it was prolonged to 31 years, even after the decree, the respondents/decreed holders could not able to get fruits of the decree. Therefore, he prayed for dismissal of the civil revision petition.

10.I heard Mr.K.Mohanamurali, learned counsel appearing for the petitioners and Mr.A.Gouthaman, learned counsel appearing for the 1st respondent/decreed holder.

11.Admittedly, final decree was passed by the District Munsif Court, Ranipet on 31.01.2011 and the same was challenged by the petitioners by filing an appeal suit along with the condonation of delay, which was numbered in I.A.No.18 of 2013 and the same is pending before the learned Sub-Court, Ranipet. As per the proceedings in E.P.No.39 of 2012, the Docket order has been

produced by the learned counsel appearing for the petitioners, which was enclosed in page Nos.55 to 63 in the typed set of papers, since, the petitioners were set exparte and subsequently they were filed E.A.No.2 of 2013 to set aside the order in E.P.No.39 of 2012 dated 21.12.2012 and the said application was allowed. Thereafter, the case was periodically posted for enquiry, but the proceedings of the learned District Munsif Court, Ranipet, does not state about the time given for filing counter or there is no endorsement either this petitioners, who are judgment debtors filed their counter or not? Since on hearing of the decree holder, the matter has been posted on 22.03.2013 "for orders", but, on the said date the application was filed by the decree holder for re-open and the same was allowed and the matter was clarified on 28.03.2013. On 03.04.2013, the reopen petition was filed and the same was allowed on 28.03.2013 and the matter was posted for arguments on 03.04.2013. On 03.04.2013 arguments was heard and the matter was posted on 12.04.2013 "for orders". On 12.04.2013, the District Munsif was on casual leave and the case was re-posted on 19.04.2013. When the matter has been taken up on 19.04.2013, the learned Judge states that clarified from the petitioner side with respect to schedule of property ordered delivery, the learned Judge has passed the following orders:

"Clarification. Clarification is heard that IInd Item is
not allotted to Decree Holder Delivery by call on

28.06.2013.”

Later, on 26.06.2013 the warrant has been returned unexecuted steps taken by the petitioner to break open and police help is filed and allowed. Fresh Delivery was ordered and posted the case on 02.08.2013.

12. On fair reading of the present order dated 26.04.2013, which was challenged by the present revision petitioners would clearly shows that the learned District Munsif has passed the non speaking order.

13. Time and again, this Court and the Hon'ble Apex Court has categorically held that when the trial Court and the executing Court were about to passing orders in respect of the petition, they might have passed the speaking order by giving valid reasons for accepting the petition or rejecting the petition. But, in the case in hand, the learned Judge without noting what was the clarification, who clarified and what argument put forth by both parties counsel, but he simply stating in the said order that the clarification is heard that the IInd item is not allotted to the decree holder and delivery and the matter is call on 28.06.2013.

14. This Court totally unsatisfied with the order of the learned

District Munsif, dated 26.04.2013, even subsequent orders, the learned Judge also passed the order stating that steps petitioner to break open and police help is filed and allowed.

15. When the Executing Court has passed the orders like this, the public will lose their faith in the Courts. Therefore, the Courts below might have passed orders with judicial view and judicial conscience. I have also seen the previous hearing, in the docketing order, the very same thing has been noted and the present impugned order dated 26.04.2013 has not properly considered and passed.

16. Admittedly, the case is pending for a long period, but that would not mean that without following the procedures, the Court can pass orders like this. Since, the matter is partition suit. Admittedly, these petitioners, who are the defendants 17 to 19 were challenging the said final decree dated 31.01.2011 by way of an Appeal suit and condoning the delay of 582 days in filing the said appeal suit is pending before the first Appellate Court.

17. In many cases, I categorically held that the partition suit and other suits should not be decided without giving any fair opportunity to either parties. But, in the case in hand admittedly, the petitioners were filed the appeal by way of condoning the delay and

the same is pending before the Sub-Judge, Ranipet. Thus being the case, the passing order of delivery should not be made in hurried manner, but, the order passed in this E.P., which is totally non speaking order.

18. Therefore, in the interest of justice by giving one more opportunity to this petitioners/judgment debtors in E.P.No.39 of 2012, I am inclined to set aside the order passed in E.P.No.39 of 2012, dated 26.04.2013 by the learned District Munsif, Ranipet and remand back the matter for fresh consideration.

19. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in E.P.No.39 of 2012 in O.S.No.22 of 2004, dated 26.04.2013, on the file of the District Munsif, Ranipet, Vellore District;

(b) if the counter is not filed, the petitioners/judgment debtors are hereby directed to file their counter in E.P.No.39 of 2012 within a period of 15 days from the date of receipt of a copy of this order;

(c) thereafter, on filing the counter by the petitioners/judgment debtors within the stipulated period granted by this Court, the learned Executing Court,

namely, the District Munsif Court, Ranipet is hereby directed to dispose the E.P. by giving fair opportunity to both the parties and pass orders within a period of six weeks thereafter, without giving adjournment to either parties and both the parties are hereby directed to give their fullest cooperation for early disposal of the execution petition in E.P.No.39 of 2012.

(d) the earlier orders passed in this E.P.No.39 of 2012 is also hereby set aside. No costs.

03.04.2017

Speaking Order/Non-Speaking Order
Index:Yes

vs

To

The District Munsif Court,
Ranipet, Vellore District.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.2826 of 2013

03.04.2017