

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.710 of 2013

Rahamath Bivi

..Petitioner

Vs

Mangalam

..Respondent

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the Judgment and Decree dated 04.10.2012 passed in CMA.No.4 of 2012 on the file of the Sub Court, Chidambaram, confirming the Fair and Final Order dated 17.10.2011 passed in E.A.No.26 of 2004 in E.P.No.22 of 2003 in O.S.No.194 of 2002 on the file of the Principal District Munsif, Chidambaram.

For Petitioner : Mr.S.V.Jayaraman, Senior Counsel
for Mr.S.Kingston Jerold

For Respondent : Mr.P.Gopalan

ORDER

This Civil Revision Petition has been filed to set aside the Judgment and Decree dated 04.10.2012 passed in CMA.No.4 of 2012 on the file of the Sub Court, Chidambaram, confirming the Fair and Final Order dated 17.10.2011 passed in E.A.No.26 of 2004 in E.P.No.22 of 2003 in O.S.No.194 of 2002 on the file of the Principal District Munsif, Chidambaram.

2. The petitioner is the Decree Holder in O.S.No.194 of 2002, petitioner in E.P.No.22 of 2003 and Appellant in C.M.A.No.4 of 2012. The respondent is the third party. The petitioner filed the said suit on 10.08.2002, against her brother one Sirajudeen, on the file of the Principal District Munsif, Chidambaram, for declaration of title and recovery of possession. The said Sirajudeen was set exparte and an exparte decree was passed on 04.10.2002. The petitioner filed E.P.No.22 of 2003 to execute the said decree.

3. In the Execution Petition, the respondent filed an application in E.A.No.26 of 2004 under Order XXI Rule 97 and Section 151 of CPC for declaration that petitioner/decreed holder is not entitled for possession

of the schedule mentioned property and prayed for dismissal of the Execution Petition. In the schedule to the petition, the respondent has given Door Nos.50B, 50C in T.S.No.474, North Car Street.

4. According to the respondent, the property in Door Nos.50B and 50C belonged to her husband Nandagopal and he was in possession and enjoyment of the same over decades and more. He was paying tax to the Municipality and was carrying on fire wood business, after obtaining licence from the Municipality. The respondent has obtained Electricity Connection in her name. The petitioner and the said Sirajudeen, who is the brother of the petitioner, colluded together, filed O.S.No.194 of 2002 and obtained exparte decree. The petitioner, taking advantage of the collusive decree tried to dispossess the respondent from her property.

5. The petitioner filed counter affidavit and additional counter affidavit. According to the petitioner, the respondent is not the wife of Nandagopal, the said Nandagopal has no right or interest in the property. The petitioner has filed a suit in O.S.No.89 of 1999 on the file of Sub Court, Chidambaram, against the respondent herein in respect of the property in Door Nos.50 and 50A, North Car Street, T.S.No.474,

Ward No.3, Block No.10, measuring 1125 sq.feet out of 4107 sq.feet. The respondent filed a memo and submitted that she has no right over the suit property and prayed that the said suit may be decreed without costs. Based on the said memo, the learned Judge decreed O.S.No.89 of 1999 by the Judgment and Decree dated 20.12.1999 and the said decree is binding on the respondent. The petition filed by the respondent under Order XXI Rule 97 of CPC is not maintainable in law and on facts.

6. Before the learned Judge, the respondent examined herself as P.W.1 and marked 56 documents as Exs.P1 to P56. On behalf of the petitioner, the power agent of the petitioner namely, N.A.S.Ansari was examined as R.W.1 and marked 12 documents as Exs.R1 to R12.

7. The learned Judge, considering the averments made in the affidavit, counter affidavit and oral and documentary evidence held that the respondent has proved that she is the legally wedded wife of Nandagopal and she is the only legal heir of Nandagopal. The learned Judge also held that the property in T.S.No.474 bears Door Nos.50, 50A, 50B and 50C. The respondent is claiming title with regard to Door Nos.50B and 50C and she has proved that petitioner cannot dispossess

the respondent from Door Nos.50B and 50C and held that the petitioner has suppressed in O.S.No.194 of 2002 and E.P.No.22 of 2003, the sub division containing Door Numbers in T.S.No.474 and allowed the obstruction petition filed by the respondent.

8. Against the said order dated 17.10.2011 made in E.A.No.26 of 2004 in E.P.No.22 of 2003 in O.S.No.194 of 2002 on the file of the Principal District Munsif Court, Chidambaram, the petitioner filed C.M.A.No.4 of 2012 on the file of Sub Court, Chidambaram.

9. The learned Appellate Judge considering the materials on record and order of the learned trial Judge, dismissed the Civil Miscellaneous Appeal on the ground that the petitioner failed to file either Judgment or Decree in O.S.No.194 of 2002, which would have proved, whether the petitioner is executing the Decree in the said suit in respect of the properties mentioned in the said suit. The learned Appellate Judge also considering Exs.R1 and R2 sale deed and settlement deed, held that T.S.No.474 consists of Door Nos.50 and 50A. The petitioner has produced documents for having paid property tax for Door Nos.50 and 50A. In spite of the same, in the Execution Petition, the petitioner has mentioned Door No.50 and for the above

reasons, the learned Appellate Judge, dismissed the Civil Miscellaneous Appeal.

10. Against the said Judgment dated 04.10.2012 made in CMA.No.4 of 2012 on the file of the Sub Court, Chidambaram, the present Civil Revision Petition is filed by the petitioner.

11. The learned Senior Counsel appearing for the petitioner contended that the petition in E.A.No.26 of 2004 filed by the respondent under Order XXI Rule 97 of CPC is not maintainable. The respondent has no right to file the said Execution Application. The petitioner has obtained decree in O.S.No.194 of 2002 and Execution Court has no jurisdiction to go beyond the decree and portion of the suit property cannot be subject matter of Execution Application.

11(a). The respondent has not produced any documents to show that her husband Nandagopal was owner of the property and in cross-examination, she admitted that she does not know how Nandagopal became owner of the suit property or whether the parents of Nandagopal are owners. In O.S.No.89 of 1999, after contest, Nandagopal was restrained from interfering with petitioner's

possession and enjoyment of the suit property. The decree has been passed against the respondent and the respondent cannot make any claim in respect of the suit property.

11(b). The Courts below failed to note that Door No.50 was re-assigned as Door Nos.50 and 50A and Door No.50 consists of total extent of 4107 sq.feet, which is the subject matter of decree in O.S.No.194 of 2002. Assigning Door Number will not in any way defeat the right of the petitioner over the extent of 4107 sq.feet, which is the subject matter of the decree.

12. Per contra, the learned counsel appearing for the respondent contended that the petitioner has no right, title or interest in respect of Door Nos.50B and 50C, which was owned by respondent's husband Nandagopal and subsequently, the respondent inherited the said property in Door Nos.50B and 50C on the death of her husband Nandagopal. The respondent has filed documents to show that Nandagopal was in possession and enjoyment of Door Nos.50B and 50C and was paying the property tax and obtained licence from the Municipality for carrying on fire wood business in the property in Door

Nos.50B and 50C. The electricity connection stands in the name of the respondent.

12(a). The petitioner filed O.S.No.89 of 1999 in respect of the property in Door Nos.50 and 50A in T.S.No.474 measuring 1125 sq.feet out of 4107 sq.feet against the respondent. The respondent is not claiming any right over the said property. In such circumstances, the respondent has filed memo stating that she has no right over the said property. Even now the respondent is not claiming any right over the property in respect of the property in Door Nos.50 and 50A.

12(b). The petitioner filed O.S.No.194 of 2002 against one Sirajudeen, who is her brother in respect of the Door No.50 in T.S.No.474 claiming title to an extent of 1560 sq.feet out of 4107 sq.feet. The said suit is collusive suit and the said Sirajudeen is none other than the brother of the petitioner. The petitioner obtained exparte decree and filed E.P.No.22 of 2003 to execute the decree in O.S.No.194 of 2002 for possession of Door No.50 measuring 1560 sq.feet. In the guise of executing the said decree, the petitioner is trying to dispossess the respondent in respect of Door Nos.50B and 50C.

12(c). The learned counsel for petitioner contended that the contention of the learned Senior counsel for the petitioner that Door No.50 is measuring 4107 sq.feet is not correct as description of the property in O.S.No.194 of 2002 is only 1560 sq.feet out of 4107 sq.feet for Door No.50.

12(d). The learned counsel appearing for the respondent further submitted that the Courts below have considered all the materials on record and oral and documentary evidence and rejected the claim of the petitioner and prayed for dismissal of the Civil Revision Petition.

13. Heard the learned Senior counsel appearing for the petitioner, the learned counsel appearing for the respondent and perused the materials available on record.

14. The point for consideration is whether the petitioner is entitled to take possession of property bearing Door Nos.50B and 50C in T.S.No.474 measuring 1560 sq.feet or not.

15. According to the petitioner, she has obtained decree in O.S.No.194 of 2002 declaring her title in respect of the property in Door No.50, which consists of total extent of 4107 sq.feet. The said contention is contrary to the description of the property in the schedule to the plaint in the said suit. In the said suit, the petitioner has claimed title over Door No.50 measuring 1560 sq.feet only. In the Execution Petition also, the petitioner has given Door Number as 50 and extent of the land as 1560 sq.feet. The petitioner has admitted in O.S.No.89 of 1999 that there are two properties bearing Door Nos.50 and 50A in T.S.No.474.

16. The contention of the respondent is that her husband Nandagopal is owner of the property bearing Door Nos.50B and 50C in T.S.No.474 measuring 1560 sq.feet. After the death of her husband Nandagopal, she is in possession and enjoyment of the property in Door Nos.50B and 50C. The respondent has substantiated her claim by letting in acceptable oral and documentary evidence. The suit in O.S.No.89 of 1999 relates to the property bearing Door Nos.50 and 50A. The respondent has filed a memo stating that she is not claiming any right over the said property. Based on the said memo, decree was passed in respect of Door Nos.50 and 50A. In view of the said decree

relating to Door Nos.50 and 50A, the contention of the learned Senior counsel for the petitioner that the respondent cannot obstruct execution of the decree obtained in O.S.No.194 of 2002 is without merits.

17. The respondent is not obstructing in taking possession of Door Nos.50 and 50A. On the other hand, she is claiming right over the property in Door Nos.50B and 50C. The petitioner has not obtained any decree of declaration of title with regard to property in Door Nos.50B and 50C. It is pertinent to note that one of the ground based on which, the learned Sub Judge, Chidambaram, dismissed the Civil Miscellaneous Appeal is that the petitioner has failed to produce the copy of the Judgment and Decree made in O.S.No.194 of 2002 to prove that execution petition filed by her is in respect of decree obtained by her. The petitioner has not filed copy of the Judgment and Decree even before this Court at the time of filing. This Court directed the petitioner to produce the copy of the Decree.

18. The learned Senior counsel for the petitioner today produced copy of the decree in O.S.No.194 of 2002, which reveals declaration of

title in respect of Door No.50 measuring 1560 sq.feet out of 4107 sq.feet. In view of such decree, the petitioner is not entitled to take possession of property in Door Nos.50B and 50C. In view of above, the reasoning of the learned Judge that execution petition filed by the petitioner is not maintainable as she has failed to prove the said execution petition is filed to execute the decree in O.S.No.194 of 2002. Admittedly, the property in T.S.No.474 is measuring 4107 sq.feet and in the copy of the plaint in O.S.No.194 of 2002 filed in the typed set of papers, the description of the property is Door No.50 in T.S.No.474 measuring 1560 sq.feet out of 4107 sq.feet. Hence, the petitioner is not entitled to take possession of the Door Nos.50B and 50C, which the respondent has proved to be in possession and enjoyment of the same.

19. The petitioner raised an objection before the Execution Court as well as this Court that the application filed by respondent under Order XXI Rule 97 CPC is not maintainable. This issue was considered by the Hon'ble Apex Court and in the Judgment reported in **[AIR 2002 SC 251] N.S.S.Narayana Sarma and others -vs- M/s.Goldstone Exports (P) Ltd., and others.,** wherein it is held that third party to the decree like the respondent claiming title and

possession independent of Judgment Debtor can maintain application under Order XXI Rule 97 and 101 CPC, if an adjudication is warranted as a consequences of resistance or obstruction made by third party in the execution of a decree. The relevant portions are extracted hereunder.

"15. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing Court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

16. Interpreting the provisions in these rules, a three Judges bench of this Court in the case of Silverline Forum Pvt. Ltd., v. Rajiv Trust and Anr., (1998)3 SCC 723 held:-

"It is true Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property

by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing Court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequences of the resistance or obstruction made by him to the execution of the decree.

17. Order 21 Rule 97 conceives of resistance of 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 the Judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger. We find that both either under the old law or the present law, the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21 Rule 97 has to be decided by the executing Court itself.

20. In view of the above Judgment of the Hon'ble Apex Court, there is no error or irregularity in the order of execution Court that

respondent can maintain the application.

21. The Courts below have considered all the above facts and allowed the obstruction petition filed by the respondent and dismissed the C.M.A.No.4 of 2012 by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned Trial Judge dated 04.10.2012.

22. In the result, the Civil Revision Petition is dismissed. No costs.

13.11.2017

Index : Yes/No

Speaking/Non Speaking

rna

To

1.The Subordinate Judge,
Chidambaram.

2.The Principal District Munsif,
Chidambaram.

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V.M.VELUMANI, J.

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13.11.2017