



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2017
(Reserved on 20.03.2017)

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CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (NPD) (MD) No. 573 of 2017
and
CMP (MD) No. 2592 of 2017

1) Nagarathinammal
2) Dakshinamoorthy

... Petitioners

vs.

Anjalaiammal (dead)

1) Pichaimuthu Pillai Anjalaiammal Trust,
Rep. by its Managing Trustee
Nataraja Pillai (dead)
Attukara Street,
Palakarai, Trichy.

2) Dhanapal

... Respondents

Prayer:- Civil Revision Petition filed the under Sec.115 of Civil Procedure code, against the order and decretal order dated 01.02.2017 in E.P.37 of 1984 in O.S.222 of 1982 on the file of the III Additional Subordinate Judge, Trichy.

For Petitioners : Mr. Raguvarangopalan

ORDER

The defendants/judgment debtors are the revision petitioners.

2. The case of the revision petitioners is that in the suit O.S.No.222/1982 filed for delivery of vacant possession, a decree was passed against them on 30.11.1983. In the E.P.No.37/84 filed pursuant to the decree, the Execution Court recorded delivery and terminated the E.P.No.37/84 on 21.07.2012. Aggrieved by the order of termination of the EP, the decree holder filed CRP(MD) No.1389/2013 wherein, the High Court by order dated 22.07.2015 set aside the order passed in E.P.37/84 dated 21.07.2012 and directed the Execution Court to consider the EP afresh.

<https://hcservices.ecourts.gov.in/hcservices/>

3. As a consequence, the EP was taken up for fresh enquiry and



the Execution Court has allowed the EP and ordered delivery of vacant possession on 01.02.2017. Challenging the said order, this revision is filed.

4. The contention of the revision petitioners is that the Amin has already complied the delivery warrant on 03.04.1984 and the case was posted for recording of delivery. On that day (i.e) 06.04.1984, the delivery was not recorded by the Court, though it was only an administrative function. Instead, the case was adjourned time and again along with Section 47 application filed by the judgment debtors.

5. At last, on 14.08.1986, Section 47 application in EA.579/84 was dismissed for default. While so, though the High Court in CRP (MD) No.1389/2013 directed to consider E.P.No.37/84 afresh, the EP Court once again ordered delivery of possession when already delivery effected on 03.04.1984 and the same has been deposed by the concerned Amin in an ancillary criminal proceedings initiated against the revision petitioners for trespass into the suit property after taking possession by the decree holder.

6. The learned counsel for the revision petitioners relied upon the following judgment to buttress his submission:-

In **Palayammal vs. I.Dhanamma and others**, reported in **2012-5-L.W. 669**, this Court held as follows:-

''....when it is alleged that possession was delivered in the execution proceedings and it is alleged that the decree holder was again dispossessed, the remedy available to such decree holder is to approach the Execution Court and not to approach the civil Court for recovery of possession. The said proposition made on behalf of the appellant, according to the view of this Court, is untenable and hence, the same deserves to be discountenanced. Of course, it is true that when execution was levied and after the execution of the decree or order, the decree holder's right is infringed, there is a scope for the decree holder to approach the executing Court and complain that the order of the executing Court was violated subsequent to the execution and hence, the same would amount to contempt. But such an opportunity will be available to the decree holder if such disposition is made before recording delivery (execution of the decree) and termination of the execution proceedings. Once the execution proceeding is terminated recording the execution of the decree, thereafter, it is doubtful whether the decree holder can file a second execution petition for the very same relief. But there cannot be any semblance of doubt that if any wrong is committed by the judgment debtor in respect of the subject matter of the decree after the



execution of a decree or order that will give rise to a cause of action for a new suit.''

7.The facts involved in this case are slightly different. In this case, even before the formal recording of delivery by the Execution Court, the judgment debtors have filed a petition stating that no delivery was effected. Therefore, the very factum of delivery itself was under dispute and kept undecided.

8.The delivery recorded by the Amin on 03.04.1984 was disputed or denied by the revision petitioners as early as on 04.04.1984 by way of Section 47 application in E.A.No.579/84. As a result, the Execution Court has not recorded the delivery, but adjourned the case. Meanwhile, the criminal proceedings were initiated for criminal trespass wherein, the revision petitioners were acquitted. Thereafter, E.A.No.579/84 was dismissed for default and E.P.37/84 was kept pending. It is also seen from the impugned order, due to administrative reasons, the execution petition was transferred to other courts and not reached finality.

9.The decree holder aggrieved by the long delay in disposal of this E.P., has approached the High Court by way of revision petition CRP(MD)No.2452/11, in which, the High Court has directed the Trial Court to dispose of the E.P.No.37/84 before January 2012. The Trial Court has observed that recording of delivery is only an administrative act, hence, wrong proceedings of re-delivery on 14.08.1986 and all subsequent proceedings are to be ignored. So saying, the Trial Court cancelled the order of re-delivery passed on 14.08.1986 and terminated the EP on 21.07.2012.

10.Since the delay in recording of delivery has prejudiced the decree holder, the High Court in CRP.No.1389/13 dated 22.07.2015 has passed the following order:-

'10.The delay in recording delivery should not cause prejudice to the decree holder. The Court should have recorded delivery immediately after 03 April 1984. the learned Executing Judge committed a jurisdictional error by recording delivery after a period of 28 years. I am, therefore, of the view that the matter requires fresh consideration by the learned Executing Judge.

11.In the result, the order dated 21 July 2012 is set aside. The Execution Petition in E.P.No.37 of 1984 is restored to file.''

11.The Execution Court in reverence to the above direction of the High Court has now heard both sides and ordered delivery of possession.

12.The revision petitioners have already taken a stand in E.A.No.579/84 that the alleged delivery recorded by Amin on 03.04.1984 is not true. It was only a paper delivery and they are in possession of the suit property. Further, they have also



successfully defended the criminal case for trespass on the same footing. Therefore, they are estopped from making a contrary plea taking advantage of the error committed by the Execution Court in terminating the E.P on 21.07.2012 holding that delivery is recorded.

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13.The said erroneous order of the Execution Court dated 21.07.2012 has been already set aside by this Court in CRP.1389/13. Therefore, the revision petitioners cannot harp on the order dated 21.07.2012 which has been set aside by the High Court subsequently.

14.This Court finds no error in the impugned order passed by the Execution Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
Trichy.

+1 cc to Mr.K.Prabhakar , Advocate in SR.No. 17210

nbi

AE/JC/04.04.2017/4P/3C

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