



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017
(Reserved on 18.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

CRP (NPD) (MD) No. 873 of 2017

and

CMP (MD) No. 3852 of 2017

Umaithurai

... Petitioner

vs.

1) Ammakannu

2) Ganesh

3) Paulraj

... Respondents

Petition filed under Section 115 of the Civil Procedure Code, to call for the records and set aside the order dated 20.01.2017 passed in the execution petition in E.P.No.30 of 2016 in O.S.No.446 of 2011 on the file of the District Munsif Court, Manapparai.

For Petitioner : Mr.T.R.Jeyapalam

ORDER

This revision petition is directed against the order of the Execution Court allowing execution petition.

2.The suit was filed for removal of superstructure encroached on the road margin adjoining the plaintiffs' property by the defendants. The Trial Court has allowed the suit on 02.06.2014. As a consequence, the execution petition E.P.No.30/16 has been filed by the plaintiffs/decreed holders.

3.In the said execution petition, the present revision petitioner/2nd defendant has filed counter contending that they have put up a residential house in S.F.No.314/1 Sampatty Village and they have not put up any construction in the suit schedule property. Therefore, the decree is not executable. Further, it has been contended that the decree is an ex parte decree. They have taken steps to condone the delay in setting aside the ex parte decree. Therefore, till such time, the decree should not be



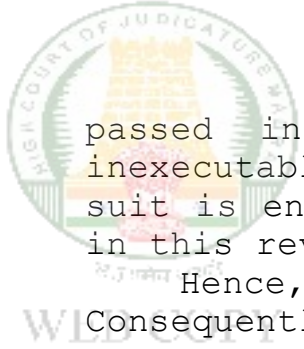
4.The Execution Court after considering the objections has held that since the decree was passed on 02.06.2014 and no steps have been taken even after lapse of 2½ years to set aside the same, the execution of decree cannot be withheld any further. While observing so, the Execution Court has ordered delivery of possession.

5.The prime contention of the revision petitioner is that while the suit is for removal of superstructure and possession, there cannot be delivery of possession as ordered by the Execution Court. Furthermore, it is contended that knowing fully well that the decree passed in O.S.No.446/2011 cannot be executed, the decree holders have filed another suit O.S.No.291/16 for declaration and mandatory injunction. Therefore, the Execution Court without going into these facts, has mechanically rejected the objection and ordered delivery of possession which is not a decree.

6.Heard the counsel for the petitioner and perused the records.

7.The specific case of the decree holders is that abutting the property which is morefully described in the plaint, the defendants have put up two thatched structures and running Tea shop blocking access to the road. The Trial Court has decreed the suit and the matter is pending before the Execution Court. Therefore, the contention of the revision petitioner that the alleged thatched sheds do not fall within the property described in the suit schedule and hence, the decree is not executable, is incorrect and unsustainable, for the simple reason that the specific case of the plaintiffs and the relief sought is for mandatory injunction against the 2nd defendant who is the revision petitioner herein, directing him to remove two thatched sheds put up by him on the road margin adjoining the plaintiffs' property.

8.The reason for seeking that relief is well found in the plaint that by putting up a structure on the road margin, the revision petitioner herein obstructs the access of the decree holders/plaintiffs to their house. Therefore, such a decree is executable and there is no error in the order passed by the Execution Court. Similarly, the other plea of the revision petitioner that there is a second suit filed by the decree holder in O.S.No.291/16 for the same relief is also incorrect, since the subsequent suit filed by the decree holders pending before the District Munsif, Manapparai, is on the ground that the revision petitioner herein has put up basement for constructing the pucca building on the south of their property. After losing the case in O.S.No.446/11 which is the subject matter of the present revision petition, taking advantage of the subsequent suit, the revision petitioner cannot prevent or stall the execution of the decree



passed in O.S.No.446/11 on an illusory reason that it is inexecutable decree since the relief sought for in the subsequent suit is entirely different. Therefore, this Court finds no merit in this revision petition.

Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Court,
Manapparai.

+1cc to M/S.T.R.Jeyapalam, Advocate SR.No.53492

Pre-Delivery order made in
CRP (NPD) (MD) No.873 of 2017
21.04.2017

JM/KP/SAR 4/02.05.2017/3P/3C