



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2017
(Reserved on 04.04.2017)

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (NPD) (MD) No. 2414 of 2016 and
CMP (MD) No. 11374 of 2016

Parvathi ... Petitioner/Petitioner/Judgment Debtor/Defendant

vs.

Sundaram ... Respondent/Respondent/Decree Holder/Plaintiff

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 19.10.2016 passed in E.A.No.71 of 2015 in E.P.No.11 of 2002 in O.S.No.503 of 1982 on the file of Principal District Munsif Court, Nagercoil, Kanyakumari District.

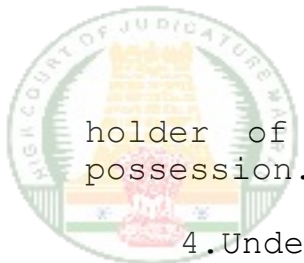
For Petitioner : Mr.V.Meenakshi Sundaram
For Respondent : Mr.M.Dennis Joe

ORDER

The litigation involved in this revision petition has a chequered history which needs a brief introduction.

2.Originally, a large extent of property was owned by one Sundalaimadan Nadar, who died leaving behind his three sons. The suit for partition was filed by the descendants of Sundalaimadan Nadar in O.S.No.6/66 and a preliminary decree was passed on 04.03.1966 holding that each of the sharers are entitled for 1/3rd share. As per the preliminary decree dated 04.03.1966, final decree was also passed on 23.12.1966. The respective parties have acted upon it. 8¼ cents of land was allotted to Sundalaimadan Nadar. One Anthony alias Kalaperumal was allotted 1/3rd share. Thereafter, in the subsequent suit filed in O.S.No.261/81 by one K.Sundaram against Anthony alias Kalaperumal and others who sold the property to K.Sundaram, a decree was passed declaring that the plaintiff K.Sundaram is entitled for the title and possession over 2¾ cents out of 8¼ cents of land in Old S.No.1382/347-2 of Nagercoil Village.

3.Aggrrieved by the partial rejection of the relief, appeal was preferred by Sundaram in A.S.No.83/82, wherein, while declaring the title of the said Sundaram over 2¾ cents of land, the appellate Court has observed that since there was no delivery of possession of the respective portion as per the partition decree passed in O.S.No.6/66, the plaintiff K.Sundaram who was declared as title



holder of $2\frac{3}{4}$ cents of land, has to file a separate suit for possession.

4. Under these circumstances, K. Sundaram has filed O.S.No.503/82 against Parvathi D/o. Veeramony Chettiar, alleging that the defendant Parvathi Ammal, who claims right through one Gnanammal who herself has no title over the property and only a tenant under Muthaiah Nadar as per the judgment dated 13.01.1982, and therefore, the plaintiff sought for recovery of possession and recovery of arrears of rent in the suit.

5. The Trial Court after full-fledged trial, by judgment and decree dated 28.09.1984, held that the plaintiff K. Sundaram has not ascertained the exact location where his $2\frac{3}{4}$ cents of land are situated in the larger extent of $8\frac{1}{4}$ cents owned by Sudalaimadan Nadar and therefore, the defendant who has purchased $\frac{1}{4}$ cents of land from Gnanammal, who is a co-sharer in the undivided $8\frac{1}{4}$ cents, cannot be treated as a tenant under the plaintiff to seek for eviction. Aggrieved by the dismissal of the suit, the said Sundaram preferred first appeal A.S.No.28/85 and the same was also dismissed.

6. Being unsuccessful in both the Courts below, Sundaram preferred S.A.No.519/86 before the High Court, wherein, the High Court has reversed the concurrent finding and has held that the rights of the parties have already been decided and the present contentions raised in the previous suit by the defendant have already been heard and decided finally. The Court having found that Gnanammal is not entitled to any share in the suit building, held that the defendant Parvathi Ammal alleged to have purchased $\frac{1}{4}$ cents of land from the said Gnanammal, is not entitled for any share in the property since her vendor herself has been declared as not entitled to any share in the suit building.

7. There is no further appeal preferred against the judgment and decree passed by the High Court in Second Appeal No.519/86 dated 29.08.1998. Thereafter, when the decree holder has preferred execution petition in E.P.No.11/02 in O.S.No.503/82, the Execution Court based on the counter filed by the judgment debtor Parvathi Ammal held that the decree of the Civil Court cannot be executed, since she is a statutory tenant and dismissed the execution petition.

8. Aggrieved by the dismissal of the execution petition, the plaintiff/decreed holder Sundaram preferred CRP.No.961/03 before the High Court, wherein, this Court has held that the lower Court is at fault in dismissing the execution petition when in the previous litigation itself the right of the parties has been finally settled and when the plea of Parvathi Ammal regarding joint ownership as co-sharer has already been negatived, this Court held that a vague plea cannot be entertained to nullify the decree passed by the Civil Court.

9. Under such circumstances, the present petition E.A.No.71/15



has been filed by the judgment debtor on the ground that the execution petition is liable to be dismissed and to declare the judgment and decree passed in O.S.No.503/82 as null and void.

10.The Trial Court, after elaborate discussion of the previous litigation and the finding of the Courts in those litigation, has held that the High Court on two occasions have considered the facts and has held against the judgment debtor, while so, there is no suppression as contended. Held no error in the decree passed in O.S.No.503/82 and the same is valid and executable.

11.Aggrieved by the order passed by the Execution Court in E.P.No.71/15, the judgment debtor has preferred the present revision petition, stating that the Execution Court has failed to consider the documents relied by the judgment debtor and the description of the property as per the decree does not tally with Survey No.1382/347. While the appellate Court in A.S.No.83/82 has held that the proper course opened to the plaintiff is to file a separate suit for partition, without filing suit for partition, the present suit O.S.No.503/82 is not maintainable.

12.All the three rounds of litigation has ultimately ended in holding that the decree holder who is the respondent herein, is the title holder of $2\frac{3}{4}$ cents of land out of $8\frac{1}{4}$ cents of land originally allotted to Sudalaimadan Nadar. It is also held by the Courts that the revision petitioner/defendant/judgment debtor has no right or title over any portion of the property, since her alleged predecessor in title herself had no share in the suit property. While so, it is very hyper-technical for the revision petitioner herein, to agitate the issue in different shades so as to deprive the lawful right of the decree holder.

13.No doubt, in A.S.No.83/82, there is a passing reference that the decree holder has to file a separate suit for partition. It has no bearing after having declared him as a title holder of $2\frac{3}{4}$ cents of land pursuant to the earlier partition decree passed in O.S.No.6/66, which has reached the logical end with passing of final decree. Taking advantage of such observation, the present judgment debtor who has no title or right over the property, has filed the present application questioning the very validity of the decree passed in O.S.No.503/82.

14.In this regard, it is pertinent to refer the judgment of the Hon'ble Supreme Court in **Rafique Bibi vs. Sayed Waliuddin**, reported in **2004 (1) SCC 287**, wherein, the Apex Court held that a decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings and lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail. It is further held as follows:



"6. What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7.

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

15. In the result, there is no merit in this revision petition and the present attempt of the revision petitioner is palpably an attempt to protract the proceedings.

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

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Nagercoil, Kanyakumari District.

Copy To:-

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.M.DENNIS JOE, ADVOCATE IN SR No. 51389
+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 51600

NBI

TE/MR : 20/04/2017 : 4P/5C