

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD). No.1323 of 2018
and C.M.P.No.6909 of 2018

1.Amudha

2.Ashok

3.Kabilan

4.Sudha

5.Dhatchanamoorthy

6.Hemalatha

7.Gowthami

8.Divya

... Petitioners

Vs.

Saraswathy Ammal

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal Orders as made in Un-numbered EA. of 2017 in E.P.No.217/2000 in O.S.No.202/1982, dated 16.12.2017, on the file of the Principal District Munsif Court, Cuddalore.

For Petitioners

: Mr.V.Balamurugane

For Respondent

: M/s.Chitra Sampath for
Mr.A.Pugalenndhi

ORDER

The relief sought for in this revision is to set aside the Fair and Decreetal Order made in Un-numbered EA. of 2017 in E.P.No.217/2000 in O.S.No.202/1982, dated 16.12.2017, on the file of the learned Principal District Munsif, Cuddalore.

2. The respondent / plaintiff filed a suit against the predecessor of the revision petitioners in O.S.No.202 of 1982 on the file of the learned Principal District Munsif, Cuddalore for declaration and recovery of possession. The suit was decreed.

3. The respondent filed E.P proceedings to execute the decree passed by the E.P.Court in E.P.No 217 of 2000 in O.S.No.202 of 1982 on the file of the learned Principal District Judge, Cuddalore and the execution petition is pending.

4. During the pendency of the Execution petition in E.P.No.217 of 2000 in O.S.No.202 of 1982, the revision petitioners filed an Execution Application under Section 47 of C.P.C. before the Execution Court in Unnumbered E.A of

2017 in E.P.No.217 of 2000. The Executing Court without considering the unnumbered E.A. of 2017 which is filed under Section 47 of C.P.C., stating that the decree in O.S.No.202 of 1982 is in executable and declare that the execution petition as null and void. The said application was rejected even without numbering the execution application filed by the petitioner therein. Against which, the revision is preferred by the revision petitioner.

5. According to the learned counsel for the petitioners, the decree does not specifically state regarding removal of the super structure and delivery of the vacant possession. Under these circumstances, the decree is in executable not acceptable and also seeks the direction of the E.P Court to the execution petition is null and void. Since the decree is in-executable, the executing Court cannot transverse beyond the scope of decree. Therefore, the order passed by the E.P. Court is liable to be set aside and direct to number the unnumbered E.A and dispose it on merits in accordance with law.

6. The learned senior counsel appearing on behalf of the respondent would submit that a decree for declaration and delivery of possession, the petitioner himself stated in his application filed under Section 47 of C.P.C. During the pendency of the proceedings, they have constructed the super

structure. Therefore without specific reliefs or directions for removal or super structure, the E.P.Court can execute the decree and he has also placed reliance on the Judgments which are as follows:

1. (1979) 1 MLJ 380 - *Duraisamy Mudaliar Vs. Ramasamyl Chittiar and another*
2. (1996) 2MLJ 259 - *Thirumangai Naidu Vs. R.Srinivasan and others*
3. (2004) 3MLJ 300 - *Kannu Gounder Vs. Natesa Gounder*

There is no error in the order passed by the E.P.Court and prays to confirm the order passed by the E.P.Court and dismiss the revision petition.

7. Heard the learned counsel for the petitioners and the learned senior counsel for the respondent and perused the materials on record.

8. It is an admitted fact that the predecessor filed the suit in O.S.No.202 of 1982 on the file of the learned Principal District Munsif, Cuddalore. The suit was decreed against the defendants. Thereafter the respondent filed the execution petition in E.P.No.217 of 2010, during the pendency of the execution petition, the revision petitioners filed an Unnumbered E.A of 2017 in E.P.No.217 of 2000 before the learned Principal District Munsif, Cuddalore.

9. The contention raised by the learned counsel for the revision petitioners that there is no specific clause in the super structure to be removed and delivery of vacant possession. During the pendency of the Execution Proceedings, the revision petitioner/Judgment Debtor filed an unnumbered E.A.of 2017 in E.P.No.217 of 2000 in O.S.No.202 of 1982 to declare the decree in O.S.No.202 of 1982 is in executable and declare the E.P.No.217 of 2000 as null and Void.

10. In the unnumbered E.A.of 2017, the learned Principal District Munsif, Cuddalore has recorded that the Execution Proceedings is of the year 2000 and the suit was filed even in the year 1982. Later during the pendency of the suit proceedings, construction of superstructure if any, will not in any way bind the respondent. If the superstructure was already in the suit property even prior to the suit, such a claim should have been raised at the earliest point of time. The plea regarding valuation of the suit should have been taken at the first instance itself and it should have been decided even before commencement of trial. The belated pleading in respect of the same, is hit by resjudicata or constructive resjudicata. Despite, direction given by the E.P. Court, the Judgment debtor failed to demolish and handover the possession.

P.VELMURUGAN, J.,

vum

11. This Court finds there is no illegality or irregularity in the order passed by the learned Principal District Munsif, Cuddalore in unnumbered E.A.of 2017 in E.P.No.217 of 2000 in O.S.No.202 of 1982, datd 16.12.2017.

12. In the result, the Civil revision petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

14.06.2018

Index:Yes/No

Speaking order / Non speaking order

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To

The Principal District Munsif,
Cuddalore.

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