

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NOS.1799 AND 1912 OF 2017
AND CONNECTED CIVIL MISCELLANEOUS PETITIONS

CRP (NPD) NO.1799 / 2017

Rathidevi

... Petitioner

Vs.

1.Mohanambal @ Mohana

Muthunayagiammal (died)

2.Chandrasekaran

3.Dhanasekaran

Dhatchinamurthy (died)

4.Sundari

5.Vanajakshi

6.Kanniga

7.Saraswathi

8.Baby Usha

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order of the learned District Munsif Cum Judicial Magistrate at Sriperumbudur dated 18.04.2017 made in E.A.No.34 of 2009 in E.P.No.24 of 2009 in O.S.No.71 of 1976.

For Petitioner : Mr.K.Bijaisundar
for Mr.G.Jeremiah

For Respondent-1 : Mr.Balachanderan

CRP (NPD) NO.1912 / 2017

1.John Xavier Thangaraj
2.Stella Mary ... Petitioners

Vs.

1.Mohanambal @ Mohana
2.Muthunayagiammal (died)
3.Chandrasekaran
4.Dhanasekaran
5.Dhatchinamurthy (died)
6.Sundari
7.Vanajatchi
8.Kanniga
9.Saraswathi
10.Baby Usha ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decreetal order dated 18.04.2017 made in E.A.No.35 of 2009 in E.P.No.24 of 2009 in O.S.No.71 of 1976 on the file of the District Munsif Cum Judicial Magistrate Court at Sriperumbudur.

For Petitioners : Mr.R.Ravichandran
For Respondent-1 : Mr.R.Balachanderan

COMMON ORDER

These Civil Revision Petitions are directed against the orders passed by the Execution Court in the petitions filed under Section 47 of the Civil Procedure Code.

2. The revision petitioners are the purchasers of the property and continued to be in possession of the same. Originally, the property belonged to one Late Subramani Gramani. He had settled life and interest in favour of his wife Kaniyammal and daughters Vengainayagi and Muthunayagiammal. The legal heirs of Vengainayagi and Muthunayagiammal were suffered with absolute right over the property. While the first respondent Mohanambal @ Mohana was a minor, the said Vengainayagi and her daughter Kamala have sold their half share in favour of other daughter Muthunayagiammal. The said Muthunayagiammal sold 39 cents out of the total extent of 62 cents to one Dhanasekaran, who in turn divided the same and sold it to several other persons. The revision petitioners are the purchasers of those plots somewhere in the year 1999 and thereafter, till second week of February 2007.

3. It is also seen that the suit for partition was filed against the vendor of the revision petitioners Muthunayagiammal by Vengainayagi, Kamala, Mohanambal @ Mohana, the first respondent herein. In S.A.No.1512 of 1981, partition in respect of the shares of the first respondent Mohanambal @ Mohana was decreed by an order dated 20.11.1988. As per the judgment of this Court, an Advocate Commissioner was appointed to divide the properties and as per the report of the Advocate Commissioner, final decree came to be passed on 25.06.2004. When the first respondent sought to execute the decree, the revision petitioners filed applications under Section 47 of the Civil Procedure Code claiming that the land in question was acquired by the Government under the Urban Land Ceiling Act and the first respondent is not entitled to the land in question. Hence, the decree is an inexecutable one and the execution petition is liable to be dismissed.

4. The Execution Court after having found that the revision petitioners are entitled to raise questions under Section 47 of the Civil Procedure Code, had found that the purchase by the revision petitioners were hit by doctrine of *lis pendens*. Secondly, when the revision

petitioners themselves admit that the Government is the owner, they cannot claim title through the said Muthunayagiammal, who is no more owner. In respect of the identity of the property it has been held that it is a curable defect and therefore, the execution petition is maintainable and dismissed the execution application filed by the revision petitioners under Section 47 of the Civil Procedure Code. Questioning the correctness of the order, these Civil Revision Petitions are filed.

5. In CRP (NPD) No.1799 of 2017, the maintainability of the execution petition was attacked solely on the ground that the land has already been acquired by the Government and the decree holder has failed to disclose the proceedings initiated under the Urban Land Ceiling Act, which would non suit her from executing the decree. The order passed by this Court in S.A.No.1512 of 1981 could not confer any title on the decree holder, as she has lost it by virtue of acquisition proceedings and the purchase of the property will not be hit by Section 52 of the Transfer of Property Act, as it is vested with the Government.

6. The revision petitioner in CRP (NPD) No.1912 of 2017 would take a further ground that identity of the property is wrong. The decree holder is seeking to execute a different property, which is in their possession. The Commissioner's report does not disclose any building in the property, whereas there is a three storeyed building, in which a school is running by them, after getting proper approval and recognition from the Government of Tamil Nadu. Therefore, the decree is not executable in the absence of any specific boundaries correlating the property and identity of the property.

7. The respondents have taken an objection that the Advocate Commissioner has clearly given the identity of the property and marked a sketch. Since the revision petitioners have taken a stand that the land belongs to the Government, she had impleaded the Assistant Commissioner of Urban Land Ceiling and Urban Land Tax and the District Collector and Tahsildar of Kancheepuram District for removing the obstruction. In spite of service, they have not appeared before the Court. The revision petitioners cannot take contradictory stand claiming that the Government is the owner of the land in question and title through

Muthunayagiammal. This Court has passed the decree which has become final and any proceedings taken by the Government will not affect the decree granted by this Court. Therefore, the Execution Application is liable to be dismissed.

8. Heard the submissions made on either side and perused the materials on record.

9. Admittedly, there is a decree of this Court conferring 1/4th share in the property sought to be executed. Even though there is a claim by the revision petitioners that the land in question was acquired by the Government, they have not filed any proof towards the same. Even assuming that the Urban Land Ceiling is applicable, it can acquire the property only in respect of the said Muthunayagiammal and not the property of the first respondent decree holder. The share of 15.50 cents allotted in favour of the first respondent remains intact and the share of Muthunayagiammal alone was acquired. In that event, the revision petitioners cannot claim title through Muthunayagiammal, which admittedly, according to them, belongs to the Government. Secondly, the

judgment debtor cannot raise a contention that the land in question has been acquired by the Government and the decree cannot be executed. Even assuming that the land in question has already been acquired under Urban Land Ceiling Act, the dispute will lie only between the Government and the decree holder and not between the decree holder and the judgment debtor. The suit for partition was executed as early as in the year 1976. The vendors of the revision petitioners have sold it much later than institution of the Civil Suit. In that circumstances, as found by the Execution Court, the purchase of the property is hit by least earnings and the purchasers of the judgment debtor cannot acquire a better title than that of their vendors. In the instant case, the purchase of the property was much after the decree passed in the Second Appeal. Therefore, it is definitely hit by *lis pendens*.

10. In so far as the identity of the property is concerned, the first respondent / decree holder is entitled to 15.50 cents in the property in question. The linear measurement clearly shows that the first respondent is entitled to 97/70 equivalent to 15.50 cents. The sketch also clearly marks the eastern side portion, which correlates to the linear

measurements. Only because the Advocate Commissioner has given the boundaries of the entire property, it will not take away the right of execution by the decree holder. The decree holder is entitled to get the benefits of the decree and the Execution Court cannot go behind the decree. Even assuming that there is an error in the decree, it is curable and correctable as per Section 152 of the Civil Procedure Code read with Order VII Rule 3 and Order XX Rule 3 of the Civil Procedure Code. In such circumstances, the revision petitioners, who have no valid title, cannot object the execution of the decree. It is for the Government to agitate the execution of the decree, but inspite of being impleaded the official respondents have not taken any steps.

11. Be that as it may, if at all if there is any dispute over the title of the property between the Government and the decree holder, it can be agitated in appropriate proceedings between them and the revision petitioners can have no say over the same. Therefore, in my considered opinion, the contentions raised by the revision petitioners that the decree passed in S.A.No.1512 of 1981 will not confer any right on the first respondent / decree holder and it was lost by virtue of the execution

proceedings, is not sustainable. Even assuming that there is an acquisition proceedings, by which the Government becomes owner, it is between the Government and the decree holder and the subsequent purchasers from the judgment debtor can have no right to agitate the same.

12. In such circumstances, the orders dated 18.04.2017 passed by the Execution Court in E.A.No.34 of 2009 in E.P.No.24 of 2009 in O.S.No.71 of 1976 and in E.A.No.35 of 2009 in E.P.No.24 of 2009 in O.S.No.71 of 1976 is based on sound reasons and does not require any interference. Accordingly, both the orders are confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

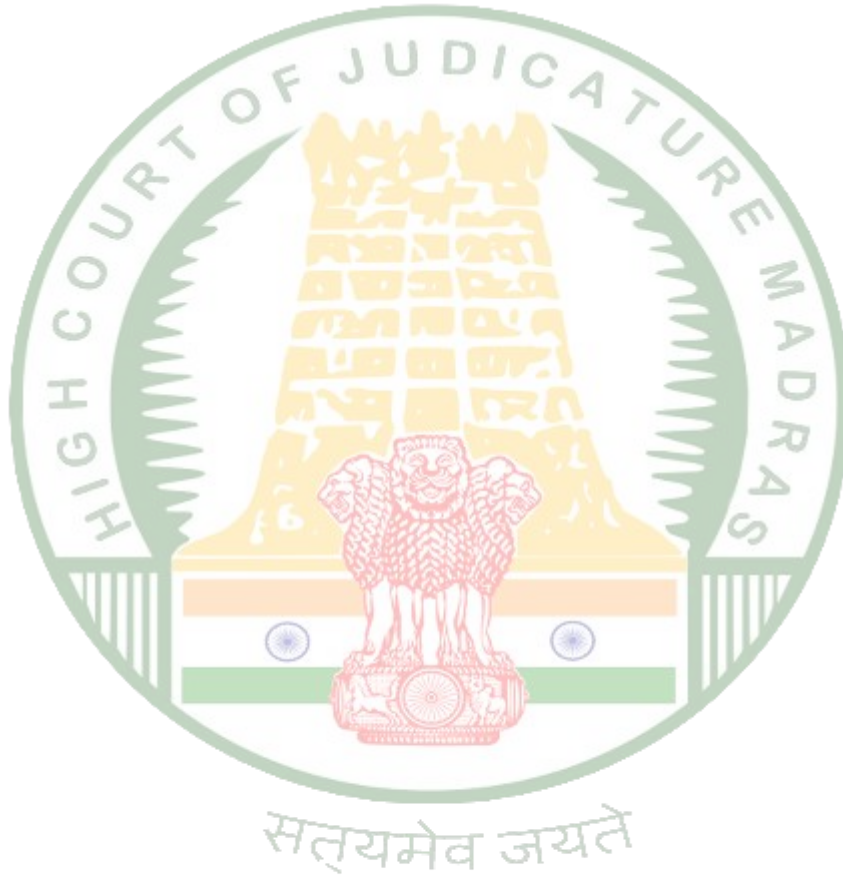
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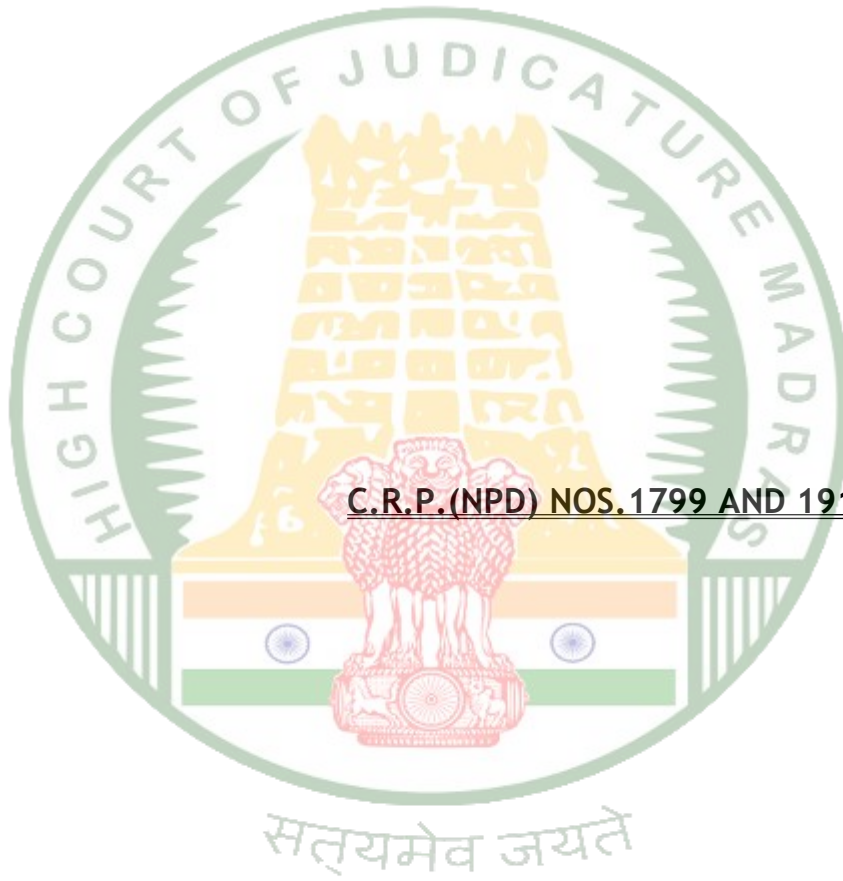
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M.GOVINDARAJ, J.

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