

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2018

Pronounced on : 19.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(NPD).No.2107 of 2018

and

C.M.P.No.12755 of 2018

S.Sarath Kakumanu

.. Petitioner

V.

1.Veerappan Arunachalam

2.Priya Asokan

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Interim Application for hearing in E.A.No.4236 of 2015 in E.P.No.1191 of 2013 in O.S.No.9974 of 1992 on the file of the learned Assistant City Civil Judge, Chennai.

For Petitioner : Mr.G.R.Lakshmanan
For Respondents : Mr.Anirudh Krishna

ORDER

The rejection of the petitioner's application filed under Section 47 of the Civil Procedure Code seeking to dismiss the application filed by the respondents herein is under challenge in the present

revision petition.

2.Heard Mr.G.R.Lakshmanan, learned counsel appearing on behalf of the petitioner and Mr.Anirudh Krishna, learned counsel for the respondents.

3.The brief facts of the case is as follows:

The original decree holder Mrs.Jayalakshmi Ammal had purchased the suit property comprised in Survey No.3958/3 through a registered sale deed dated 23.02.1960. When her right to use and enjoy the private road was obstructed by the petitioner herein, she had filed a suit in O.S.No.9974 of 1992 seeking for the relief of permanent injunction. The suit came to be decreed ex-parte. After the death of Jayalakshmi Ammal, the respondents herein had acquired the suit property through various conveyances and by virtue of inheritance in accordance with the Hindu Law of Succession. Since the respondents herein were of the view that the petitioner had violated the decree, they had filed an Execution Petition in E.P.No.1191 of 2013 in their capacity as the present owners of the suit property and the beneficiaries of the suit decree. Questioning the rights of the respondents herein to execute the decree, stating that they are not the successor in interest of the deceased decree holder, an application under Section 47 of the Civil

Procedure Code was filed by the petitioner herein, to reject the Execution Petition and the dismissal of the same is being challenged in this revision.

4.The learned counsel for the petitioner mainly submitted that the execution petitioners have not been recognized as the legal representatives of the deceased Jayalakshmi Ammal and as such, they are third parties and therefore, cannot maintain the Execution Petition. His further submission was that the survey number in the decree and the survey number of the private road, which is the subject matter of the Execution Petition are different and therefore, the question with regard to the discrepancy requires to be addressed in his petition filed under Section 47 CPC., and therefore, the Court below was not correct in rejecting the same.

5.The learned counsel for the respondents on the other hand submitted that the second respondent herein is the grand daughter of Jayalakshmi Ammal and is also the wife of the first respondent herein. After the death of Jayalakshmi Ammal, the respondents herein have acquired the suit property through various conveyance and also through inheritance. As such, they are entitled to maintain the Execution Petition. He also submitted that the discrepancies in the survey number was not the ground raised by the petitioner

herein in his application filed under Section 47 CPC and as such, he is disentitled to raise the same in the present revision. According to him, since there was a discrepancy in the survey number wherein the suit property was inadvertently shown as survey No.3958/2 instead of survey No.3958/3, he had already filed an application in E.A.No.1776 of 2017 under Section 47 of the Code of Civil Procedure seeking for rectification of the survey number and the same is pending. By relying upon the order of this Court in **CRP. No.468 of 2016 [S.Sarath Kakumanu V. Veerappan Arunachalam & Priya Asokan] dated 21.04.2016**, the learned counsel submitted that the arguments put forth in the present revision has already been answered and has become final and as such, the ground of discrepancy to the survey number is not available to the petitioner herein. With this submission, the learned counsel for the respondents submitted that the petitioner herein has been continuously litigating with numerous cases, thereby preventing the respondents herein from enjoying the fruits of the decree, which according to him, is an abuse of process of law and therefore, sought for rejection of the Civil Revision Petition.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The first ground raised by the learned counsel for the petitioner is as to whether the respondents herein can maintain the Execution Petition. It is seen that the respondents claim rights over the suit properties by virtue of certain conveyances and by inheritance. The said conveyances as well as the inheritance, is not disputed. The only objection raised by the petitioner is that such beneficiaries to the decree, should be recognized by the Court and in the absence of such recognition, the respondents herein cannot step into the shoes of the deceased decree holder.

8.I endorse such a submission.

9.Section 146 of the Code of Civil Procedure empowers the representatives of a decree holder to step into the shoes of the deceased. While discussing the scope of Section 146 of the Code of Civil Procedure, this Court, in a decision in **N.Srinivasa Chettiar V. Jagannathababu and others** reported in **2006 (5) CTC 70**, had held that the phrase "any proceedings" found in Section 146 of the Code of Civil Procedure refers to execution proceedings also and as such, the representatives of the deceased decree holder, are entitled to maintain the execution proceedings. Therefore, I do not find any force in the submission of the learned counsel for the petitioner that

the respondents herein cannot maintain the execution proceedings.

10.The learned counsel for the petitioner also made a submission that the decree pertains to a private road in Survey No.3958/2, whereas the private road is situated in Survey No.3958/3 and therefore, in view of the discrepancy, the Execution Petition itself is liable to be rejected. As pointed out by the learned counsel for the respondents, the petitioner herein had not raised such a plea in his application under Section 47 before the Execution Court. While that being so, it would not be proper to make such a submission by this Court that the Execution Court erred in omitting to appreciate this aspect.

11.At this juncture, the learned counsel for the petitioner relies upon para 8 of his application filed under Section 47 before the Execution Court and submits that the point was raised before the Execution Court. The said paragraph in the application in E.A.No.4236 of 2015 reads as follows:

"The petitioner submits that it is claimed that the private road is also owned by the Execution Petitioners. The Execution Petitioners have also filed a suit in which all the documents referred to herein in the proof affidavit have also been filed as documents and marked there as

exhibits. One of the issues in the suit is whether the Execution Petitioners who are the plaintiffs in the suit are the owners of the private road."

12.A bare reading of the aforesaid paragraph cannot be construed to the effect that the petitioner had pleaded that the Survey No.3958/3 has been quoted as Survey No.3958/2 and in view of this misdescription, the Execution Petition is not maintainable. On the other hand, the aforesaid ground raised in the application under Section 47 only indicates that the execution petitioners are not the owners of the private road to Door Nos.11 and 12. This is not the present ground raised in the Civil Revision Petition and therefore, it cannot be said that the trial Court had not considered this aspect while rejecting the application under Section 47.

13.Even otherwise, it is seen that this ground raised by the petitioner has already been answered by this Court in an earlier proceedings in CRP.No.468 of 2016 dated 21.04.2016, which came to be filed against the order rejecting the petitioner's application to reopen the petition. While rejecting the revision, this Court had observed as follows:

"2.It is the case of the Judgment Debtor that even in the Settlement Deed executed by

Jayalakshmi Ammal in favour of the children, the property conveyed is stated as Door Nos.11-12 and the alleged private road is being described only as a common passage and no portion of the common passage has been specifically conveyed. In other words, the issue raised is that the petitioners, who filed the Execution Petition, even though may be the owners of the building, but not the owners of the adjoining private road to Door Nos.11-12.

2.1. This contention is answered by the learned counsel appearing for the decree holders that the description of the passage is found in the body of the sale deed, though not in the schedule and that this contention cannot be permitted to be raised at this stage.

2.2. This contention is correct, as the Executing Court is not expected to go beyond the terms of the decree."

Even on the merits of the present ground raised with regard to the misdescription of the survey number, the aforesaid earlier finding of this Court, which has become final, would preclude the petitioner to raise the same before this Court once again.

14. Apart from that, the respondents herein have already filed an application under Section 47 CPC., seeking for rectification of the error in the suit decree in E.A.No.1776 of 2017, which is said to be

pending. In this application filed by the respondents herein, the reason cited for the discrepancy of the survey numbers is on account of inadvertence. Section 152 and Section 47 of the Code of Civil Procedure enables rectification to certain mistakes in judgments, decrees or orders on the application of any of the parties to the litigation. As such, the respondents herein have rightly invoked the provision of Section 47 to have the alleged mistake of the survey number, rectified through their application in E.A.No.1776 of 2017.

15.The Hon'ble Apex Court in a decision in ***Pratibha Singh and another V. Shanti Devi Prasad and another*** reported in ***2003 (2) SCC 330*** had recognized such powers for rectification and had observed that a decree of Competent Court should not be allowed to be defeated on account of such inadvertence. The relevant portion of the decision reads as follows:

"17.When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the

facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.

In this legal background, the petitioner herein, having failed to raise the specific plea with regard to the description before the Execution Court in his application under Section 47 and also that the same ground being already answered by this Court in an earlier decision in CRP No.468 of 2016 and further that the rectification of survey number in the decree is pending in an application under Section 47 CPC., filed by the respondents herein, it can only be held that the discrepancy of the survey numbers will not entitle the petitioner herein to seek for rejection of the Execution Petition itself.

16. At this juncture, the learned counsel for the petitioner submitted that even assuming that the petitioners herein have acquired the suit properties through law of succession, there are other legal heirs, who are not parties to the execution proceedings and even on this ground, the Execution Petition is liable to be rejected. This again is not a ground raised before the Execution Court. Nevertheless, the submission that one of the legal heirs cannot execute the decree is also not based on any established legal position. This Court in a decision in ***Mahilapranam, S. and another V. Jamina Mosque Executive Committee, through its President P. Abdul Gaffoor*** reported in **1996 (1) MLJ 268**, had an occasion to deal on this aspect in the following manner:

8. What is the relationship of Sivasubramania Pillai and Mahilapranam when they were impleaded as legal representatives of the original decree-holder Ramalakshmiammal. Even though the decree was in favour of only one individual, when that decree-holder died, the right under the decree devolved on two persons. According to me, the legal representatives became joint decree-holders under law.

*9. In ***Khadim Husain v. Abdul Rahman***, a similar question came for consideration. In paragraph 3 of the judgment, the said question was considered. In that case, it was argued that*

on the basis of the provisions of Order 21, Rule 15, C.P.C., the principles of joint decree-holder executing a decree can be made applicable only if the decree itself is passed in favour of more than one person and the same is not applicable where the legal representatives of a decree-holder are impleaded. It was contended thus:

...It has been argued on behalf of the respondent that Order 21, Rule 15 applies only to decree-holders in whose favour a decree had been passed and would not cover legal representatives of a deceased decree-holder.

10. On the above contention, it was decided as follows:

Order 21, Rule 16, C.P.C., however, says that if the interest of any of the decree-holders in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it. This provision, therefore, gives some intention or mind of the Legislature.

If a decree-holder dies leaving number of heirs, they evidently become joint decree-holders after the death of that decree-holder, and there appears to be no reason why one of these persons be entitled to execute the decree outstanding in favour of all the heirs of the deceased decree-holder.

11. On the basis of this principle, Sivasubramania Pillai and Mahilapranam became joint decree-holders.

12. In respect of joint decree-holders, Order 21, Rule 15, C.P.C. enables any one of them to execute the decree. It reads thus:

Application for execution by joint decree-holder:

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

17. On the basis of the above legal position, if the first petitioner herein can be treated as a joint decree-holder, he can, without even impleading the legal heirs of the deceased decree-holder, namely, Sivasubramania Pillai proceed, with the execution. If the first petitioner can proceed with the execution even without

impleading the legal heirs, I do not think that there can be any difficulty in proceeding with the execution with the legal representatives of Sivasubramania Pillai along with the first petitioner-herein. The question may be different, if the legal heirs of Sivasubramania Pillai by themselves and they alone seek execution of the decree. Here is a case where one of the joint decree-holders has filed the execution petition and wanted the legal heirs of the deceased decree-holder also to be impleaded. Without impleading also, the step taken by the joint decree-holder to execute the decree is valid for which Order 21, Rule 15, C.P.C. applies. If that be so, the order of the court below that without production of probate or letters of administration, they cannot proceed with the execution nor can they be impleaded cannot be correct.

17.The aforesaid decision is self explanatory and as such, even assuming that there are other legal representatives of Late Jayalakshmi Ammal, the present Execution Petition by one of the legal representative is maintainable.

18.In the light of all the aforesaid discussions, I am of the view that when there is no infirmity in the order passed by the Execution Court while rejecting the application under Section 47

CPC. Accordingly, the Civil Revision Petition stands dismissed.
Consequently, connected Miscellaneous Petition is closed. No costs.

19.12.2018

Index : Yes/No

Order :Speaking/Non Speaking

DP

To

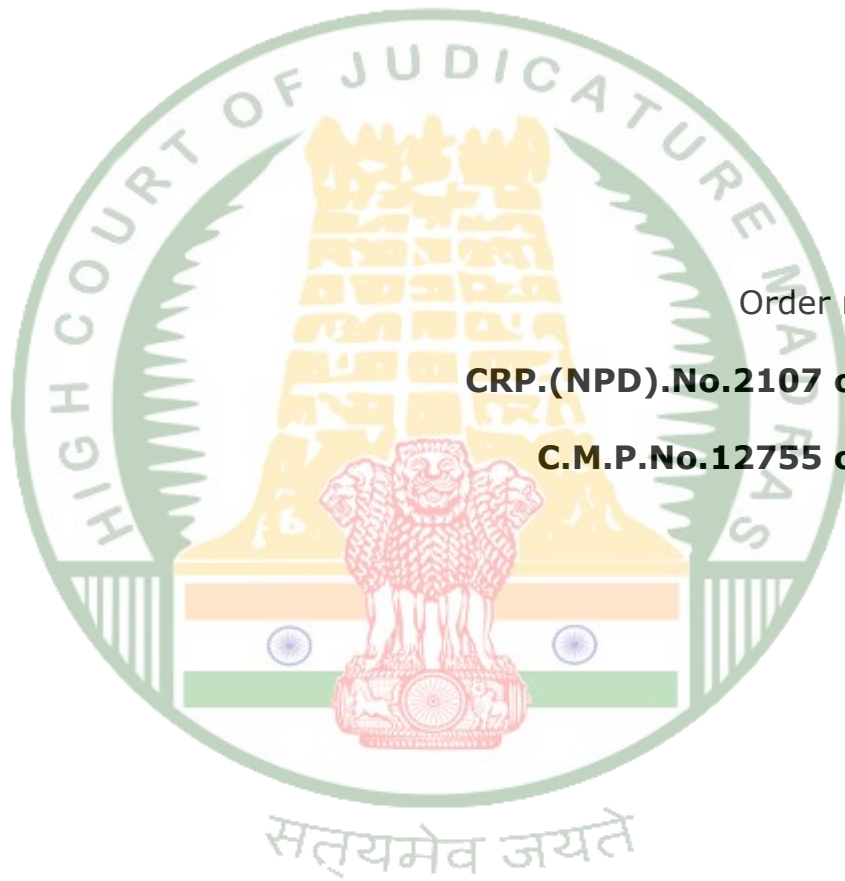
The Assistant City Civil Court,
Chennai.



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M.S.RAMESH, J.

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Order made in

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