

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.11.2017

Delivered on : 18.01.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

C.R.P.No.4385 of 2014 &
MP No.1 OF 2014

Raju Naidu

.. Petitioner/2nd Respondent/
2nd Judgment Debtor

versus

1.Chenmouga Sundra
2.Chenmouga Canda
3.Parvadi Vauban
4.Chenmouga Gustava
5.Chenmouga Kouge
6.Chenmouga Siva
7.Chenmouga Kirouchena
8.Rade Cadet

.. Respondents 1 to 8/
Petitioners/Decree Holders.
.. 9th Respondent/1st Respondent/
1st Judgment Debtor

Prayer: This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, against the Order and Decretal Order dated 08.09.2014 made in E.P.No.286/1999 in O.S.No.4/1983 on the file of the Court of the Principal Sub Judge, Puducherry.

For Petitioner : T.P.Manokaran, SC for
M/s.K.P.Jotheeswaran

For Respondents : Mr.R.Subramanian for
Mr.R.Sreedar for RR1 to 8

R9 - Given up
ORDER

The revision petitioner herein is a second defendant in a suit in O.S.No.4 of 1983 and second judgment debtor in E.P.No.286 of 1999 while the 9th respondent herein is the first defendant and first judgment debtor therein.

2. The present civil revision petition has been filed against the order and decretal order dated 08.09.2014 made in

E.P.No.286/1999 in O.S.No.4/1983 on the file of the Principal Sub Judge, Puducherry.

3. The brief facts, necessitating the filing of the revision petition by the revision petitioner/second defendant are stated hereunder:

3.1 One Chenmougam Aroumugam purchased half share of 'A' schedule property under a sale deed dated 31.01.1959. His wife purchased another half share under another sale deed dated 15.12.1959. The respondents 1 to 8 herein are the legal heirs of said Chenmougam Aroumugam and his wife. Besides the above said property, the said Chenmougam Aroumugam also purchased 'B' schedule property. He had executed a will in favour of 9th respondent herein, who was the first defendant in the suit in respect of 'A' schedule property. A suit was filed in O.S.No.262 of 1980 by the plaintiffs therein, who are the respondents 1 to 8 herein against their father, namely, Chenmougam Aroumugam for permanent injunction restraining him from alienating the suit property. During pendency of the suit, the father of the plaintiffs entered into a sale agreement with the second defendant, who is the revision petitioner herein on 22.6.1981 for sale of the property and received a sum of Rs.40,000/- towards advance of sale consideration. On 30.9.1981, the suit filed by the plaintiffs/respondents 1 to 7, came to be decreed in favour of the plaintiffs, restraining their father from alienating the suit property. After filing an appeal in A.S.No.146 of 1986 against the judgment and decree dated 30.9.1981 in O.S.No.262 of 1980 and during pendency of the appeal, their father died on 16.11.2008 and therefore, the appeal got abated and the judgment and decree made in O.S.No.262 of 1980 thus became final and absolute. The said Chenmougam Aroumugam also executed a Will in favour of the 9th respondent herein who was the first defendant in the above said suit in respect of 'A' schedule property. In these circumstances, a suit was filed by respondents 1 to 8 herein in O.S.No.4 of 1983 on the file of the Principal Sub Judge, Puducherry against the revision petitioner as well as 9th respondent herein who were shown as defendants in the said suit. The said suit was filed for declaration of testaments dated 12.06.1978 and 19.11.1981 executed by said Chenmougam Aroumugam in favour of the first defendant are void and unenforceable and also for declaration, to declare that the plaintiffs 1 to 8 therein, are absolute owners of 'A' and 'B' schedule properties. The said suit was decreed on 1.8.1986 and the operative portion of the decree and judgment is extracted herein below:

"13. Issue No.5: In view of the finding on issues 1 to 5 above, it is ordered that and declared that the testament Ex.A8 dated 19.11.1981 executed by deceased Chanmouga in favour of first defendant in respect of A schedule property is void and

unenforceable to the extent of 7/8 share. Ex.A7 dated 12.6.1978 Will is void and declared not binding on plaintiffs. It is further declared that plaintiffs 1 to 8 are the rightful owners of 7/8th share of A schedule and absolute owners of B schedule property. The 2nd defendant's counter claim for specific performance of agreement of sale under Ex.B1 is rejected. But the 2nd defendant is entitled to the refund of the advance amount from plaintiffs 1 to 8 jointly and severally. The plaintiffs 1 to 8 jointly and severally liable to refund to D2 the advance of Rs.40,000/- within three months from this date and entitled to possession of B schedule property from D2 within one month after such payment to D2 or deposit in the Court. The plaintiffs are granted three months time to pay additional court fee of Rs.2624.25 from this date."

3.2 The trial Court by the above judgment and decree, had negatived the counter claim of the revision petitioner herein and directed the plaintiffs in the suit to refund the advance amount of Rs.40,000/- paid to the father of the revision petitioner within three months from the date of judgment and decree. As against the judgment and decree of the trial Court, the respondents 1 to 8 herein filed an appeal in A.S.No.146 of 1986 to the extent that the advance amount received by their father was ordered to be refunded. The revision petitioner herein also filed an appeal in A.S.No.145 of 1989. Both the appeals were disposed of by common judgment dated 6.8.1993. The decree of the trial Court was modified to the extent that the testament dated 12.6.1978 was found to be valid to an extent of 1/4th share. But the plaintiffs have preemptive right and further they have deposited Rs.40,000/- which is to be accepted by the second defendant, namely, the revision petitioner herein. As against the appellate judgment and decree, two review applications in R.A.Nos.3 and 4 of 1994 were filed, but the same, however were dismissed on 13.12.2001. The dismissal of the review applications is the subject matter of challenge in CRP Nos.450 and 451 of 2003 before this Court. The said Civil Revision Petitions are still pending for final consideration.

3.3 The plaintiffs in the above circumstances, filed E.P.No.286 of 1999 on 5.4.1999 along with E.A.Nos.364 of 1999 for enlarging three months period for depositing the sum of Rs.40,000/-. The revision petitioner herein who was the second judgment debtor, filed a counter opposing the same, however, despite the same. the said E.A. came to be allowed and subsequently, the amount of Rs.40,000/- was also deposited. The orders passed in E.A.No.364 of 1999 was not put to challenge and the same has become final. Thereafter, the said EP was finally

ordered on 8.9.2014 which the subject matter of challenge in the present revision petition.

4. Mr.T.P.Manoharan, learned senior counsel appearing for the revision petitioner at the outset, would submit that the decree by the trial Court in O.S.No.4 of 2003 is a non-executable for the reason that the time granted by the trial Court for payment of advance of Rs.40,000/- to the revision petitioner was not complied with and therefore, the decree became unenforceable as against the revision petitioner. According to the learned senior counsel, the decree as such, does not exist in the eye of law. The learned senior counsel for the petitioner would further contend that before the appellate Court no extension of time was sought for by the appellants, namely, respondents 1 to 8 herein and even after dismissal of the appeals, the appellate Court had not granted any extension of time to deposit the amount. Therefore, he would submit that the Execution Petition was not maintainable as the plaintiffs lost their right to execute the decree. According to him, the decree as such, had become a nullity and non-executable. He would further contend that Article 137 of the Limitation Act, if no time limit has been fixed, then the time limit for compliance is within a period of three years and according to the learned senior counsel, even after passing the decree and judgment by the appellant Court, the Execution Petition had not been filed before three year period. According to him, the appellate Court passed its judgment and decree on 6.8.1993 and by which event, the respondents 1 to 8 ought to have filed the Execution Petition before 5.8.1996 and on the other hand, EP was filed admittedly only on 30.4.1998. He would also contend that extension of time can be sought only before the original Court and not before the Executing Court because such extension of time tantamount to altering the very decree and the Executing Court is not vested with the power of altering the decree granted by the original Court. According to the learned senior counsel the Execution Petition was filed after 12 years from the date of the original decree and judgment dated 1.8.1986 and therefore, the Execution Petition was barred by limitation and thereby, the Executing Court ought not to have entertained the Execution Petition.

5. Per contra, the learned counsel appearing for the respondents 1 to 8 herein would submit that an application seeking for extension of time, was filed in E.A.No.364 of 1999 wherein, the present revision petitioner had filed a detailed counter and the same was considered and the time was extended by the Executing Court. The learned counsel would submit that the order passed by the Executing Court in E.A.No.364 of 1999 was not put to challenge by the revision petitioner and instead of challenging the same, the present revision petition has been

filed against the consequential order passed by the Executing Court. According to the learned counsel for the respondents 1 to 8, the appellate Court, having modified the decree passed by the Executing Court and the doctrine of merger is applied, the execution petition which was filed in 1999 is very much within the time and the same was perfectly maintainable. He would also submit that the revision petitioner is only a pendente lite agreement holder and therefore, he cannot resist the execution proceedings and sustain it legally.

6. At this, the learned senior counsel for the revision petitioner would submit that such contention may not be a valid contention in view of the fact that the suit which was filed originally in 1980 was only gratuitous transaction like, will, gift, etc., and therefore, such pendency of the suit was no bar for sale of property. The learned senior counsel would also submit that Section 53-A of the Transfer of Property Act would apply, namely, part performance and therefore, the revision petitioner had every right to oppose grant of relief in the execution petition filed by the respondents 1 to 8 herein. The learned senior counsel would further contend that the appellate Court only confirmed the decree and not modified and therefore, the original decree became enforceable immediately.

7. The learned counsel appearing for the respondents would submit that the appellate Court had in fact, modified the original decree passed by the trial Court particularly para 4 and 5 of the decree dated 6.8.1993 by holding that the plaintiffs were entitled to have preemptive right over 1/4th share in respect of the subject property and also further held that the revision petitioner has to accept the earnest money of Rs.40,000/-. Whatever may be the extent of modification, nevertheless, the original decree and judgment of the trial Court had been modified by the appellate Court, as rightly contended by the learned counsel appearing for the respondents 1 to 8 herein. The learned counsel for the respondents would also draw the attention of this Court to Section 148 of CPC, wherein, it is provided for extension of time and in the same breadth, the learned counsel also would submit that the trial Court and the executing Court are not different in the matter of exercising jurisdiction and therefore, the executing Court was rightly approached for extension of time which was also granted, despite the protest from the revision petitioner.

8. The above submission was made by the learned counsel for the respondents as an answer to the submission of the learned senior counsel for the petitioner that the extension of time amounts to alteration of the decree granted by the trial Court and therefore, such order passed by the Executing Court is impermissible in law.

9. According to the learned senior counsel for the revision petitioner, no reasons were spelt out by the Executing Court towards objections raised by the revision petitioner and therefore, such proceedings is in violation of principles of natural justice. He placed reliance on the decision reported in "(2009) 9 Supreme Court Cases 219 (Secretary, Agricultural Produce Market Committee, Bailhongal Vs. Quasami Janab Ajmatalla Salamulla and another)", particularly, this Court's attention was drawn to paragraph 9 of the Judgment, which is extracted below:-

"9. Courts, whose judgments are subject to appeal have to remember that the function of a reasoned judgment are:
(i) to inform the litigant the reasons for the decision;
(ii) to demonstrate fairness and correctness of the decision;
(iii) to exclude arbitrariness and bias; and
(iv) to enable the appellate/revisional court to pronounce upon the correctness of the decision. Be that as it may."

10. The learned senior counsel has also relied on FCC (French Civil Code), particularly, Clause No.913, Chapter III and Clause No.1583 in Chapter I, which is extracted below:-

"913. A man can only dispose of half of his property by gift inter vivos or by will if he leaves (d) a legitimate child surviving him. If he leaves two children he can only dispose of a third. If he leaves three or more he can only dispose of a quarter.

(Law, 25th March, 1896)--An illegitimate child who has been recognized in the form required by law is entitled to a share in the reserve (e). The reserve he is entitled to is a fraction of the share he would have had if he had been legitimate; this fraction is to be ascertained by

(d) Laurent refers to Art.785, which says that the heir that renounces is treated as if he had never been an heir, and says that the present Article, when it says "leaves" children means "children accepting the succession," and he says that any child disclaiming is not reckoned for the purposes of finding out what proportion of property

the deceased may dispose of. He admits the question is treated as settled the other way by the Courts, but says that should not prevent him or any other commentator laying down the true principles, and he adds: "There is no longer any science of law if the science must bow to decisions. Decisions change, principles never do". This is an interesting point of view to an English lawyer, and results from a system of jurisprudence in which Courts are not bound by their own or the decisions of other Courts. (See Laurent, Vol. XII. para 21). Again, at Sect.355 of Vol.XIII, he says: "The commentators happier than the judges, see only principles: if they are adhered to faithfully, then difficulties vanish".

(e) The part of a man's property which he is unable to dispose of by law is called "la reserve," i.e., the portion reserved by law for the relatives. Adhering to the proportion (f) existing between the share given to an illegitimate by law when a succession becomes open owing to an intestacy and that which such child would have had under the same circumstances if he had been legitimate. (C.926 and following; 1004, 1090, 1094 and following (g).).

(f) The explanation given by Mr.Letellier who was reporter of the Bill as to the manner in which the reserve of an illegitimate child should be calculated was as follows:- You must treat the illegitimate child first as if he had been legitimate, and ascertain what would have been his reserve in that case. Then you give him a fraction of such reserve in proportion to his right as heir, viz., if the deceased leaves children or remoter issue, a half of a legitimate child's share (See Art.758). If the deceased leaves no descendants, and only ascendants or brothers and sisters, or issue of brothers and sisters, three-fourths of a legitimate child's share (Art. 759). If the deceased leaves no descendants, ascendants, brothers or sisters surviving him, then the whole property just as if he had been a legitimate child (Art. 760). Thus, in the last case, where the deceased had none of the relatives last-mentioned, and only

illegitimate children, such children would have the same rights as legitimate children, and the portion the deceased had the unfettered disposition of would be a half a third, or a quarter, according as there were one, two, or more illegitimate children.

(g) The term "Children" in this Article includes remoter issue. Such remoter issue are, however, only reckoned as representing per stripes the child whom they represent in the succession of the donor.

"1583. The sale is complete as between the parties from the moment that they have agreed as to the thing and the price (d). As between the vendor and purchaser, the property passes to the purchaser as of right, although the thing may not yet have been delivered nor the price paid. (C.711, 1138, 1141, 1217, 1218, 1591, 1606, 1614, 2182)."

11. The learned senior counsel appearing for the petitioner would further rely upon a decision of the Hon'ble Supreme Court of India reported in "(2012) 3 Supreme Court Cases 548 (Bimal Kumar and Another Vs. Shakuntala Debi and Others)". He particularly, placed reliance on paragraphs 40, 44 and 45, which are extracted below:-

"40. We have already held that the decree was a final decree. Therefore, it was immediately executable. The question, thus, would be 'was the time arrested?' On a query being made, it was fairly conceded at the Bar that at no point of time, there was any order by any court directing stay of operation of the judgment and decree passed in P.S. No. 131 of 1962. The question that emanates for consideration is whether the period during which the suit and appeal preferred by the appellants remained pending is to be excluded for the purpose of limitation.

"41.

"42.

"43.

"44. In the case at hand, the compromise decree had the status of a final decree. The latter suit filed by the appellants was for partition and declaring

the ex parte compromise decree as null and void. As has already been stated, there was no stay of the earlier judgment or any proceedings emanating therefrom. In the absence of any interdiction from any court, the decree-holder was entitled to execute the decree. It needs no special emphasis to state that there was no impediment or disability in the way of the respondents to execute the decree but the same was not done. Therefore, the irresistible conclusion is that the initiation of execution proceedings was indubitably barred by limitation.

"45. Thus analyzed, the reasons ascribed by the learned single Judge are absolutely unsustainable. The period of limitation stipulated under Article 136 of the Act could not have been condoned as has been so presumed by the learned single Judge. The reliance placed on the decision in *Bharti Devi* (supra) is totally misconceived inasmuch as in the said case, the execution proceeding was initiated for permanent injunction. No exception can be taken to the same and, therefore, reliance placed on the said decision is misconceived."

12. He would submit that as per the above Judgment of the Hon'ble Supreme Court of India, the decree is immediately executable, particularly, when the appellate Court had not admittedly granted any interim stay of the decree. He would rely on a decision reported in A.I.R 1931 Nagpur 54 (*Dada Vs. Ganpairao*) for the submission that the time starts from the date of the decree. He would draw the attention of this Court to the following passage:-

"I hold then that, when a decree for possession is passed on condition of payment of a certain sum by the decree holder, the starting point for limitation for execution of the decree is the date of the decree and not the date of payment by the decree-holder. The decree is one that is capable of being executed immediately, as the condition of payment is one entirely dependent upon the will of the decree-holder or his ability to pay. In such a case the decree cannot be said to be a conditional one or one that is

incapable of being executed until a condition is fulfilled. The decree-holder cannot obtain extension of limitation by deferring payment. Limitation runs from the date of the decree, whether any time for payment is fixed or not. The only effect of fixing a time for payment is that payment cannot be made after the date fixed. If no time is fixed payment may be made under the terms of the decree at any time within the period of limitation, i.e., within three years of the date of the decree. Such a case therefore, is governed by Art.182, Sch.1 Lim. Act and not by Art.181."

13. Further reliance is placed on the decision reported in "2008 (1) SCC 520 (Manohar s/o Shankar Nale and others Vs. Jaipalsing and others)" wherein, the Hon'ble Supreme Court of India has observed that the decree passed in favour of the respondent had become enforceable immediately on its passing. The Court observed that the review petition having been dismissed and operation of the decree not having been stayed at any stage, an execution petition therefor was required to be filed within a period of 12 years.

14. Another decision was cited, reported in "AIR 1967 Supreme Court 1236 (Sital Parshad and another Vs. Kishori Lal)", wherein this Court's attention was particularly drawn to paragraph 14 of the judgment, which reads as under:

"14. Further we are of opinion that in a case where an appeal from the preliminary decree is dismissed and the preliminary decree is confirmed in toto, it does not follow that the period of payment allowed in the trial court's decree is extended automatically even though a final decree has been passed in the meantime. it seems to us that it is the duty Of the appellate court to indicate when dismissing the appeal from a preliminary decree in toto whether the time for payment is to be extended and if it does not do so, the original time granted for the purpose must stand."

15. The learned senior counsel would also rely on the decision of the Punjab & Haryana High Court, reported in A.I.R. 1982 P & H 353 (Praja Singh and others Vs. Gurdip Singh and others), in which, the Punjab & Haryana High Court has held that the decree for possession made executable on payment of

specified money to the judgment-debtors; Decree-holders could enforce it forthwith by paying or depositing the money; Decree holders levied execution within 12 years but deposited the money beyond that period; Execution application was dismissed as time barred.

16. According to the learned senior counsel, in this case, the decree was passed on 01.08.1986 and the execution petition was filed only in 1989 and therefore, the execution petition ought to have been dismissed as time barred. The learned senior counsel would further rely on the decision of the Hon'ble Travancore-Cochin High Court, reported in "A.I.R. 1952 Travancore - Cochin 440" (Narayanan Nair Raman Nair Vs. Govindan Nair Raman Nair and another), wherein, the Travancore - Cochin High Court has held that the Executing Court has no jurisdiction to extend the time as fixed in the decree because it will be altering or modifying the terms of the decree. The general power conferred on the Court by Section 148 of the Civil Procedure Code is not intended to cover such cases. On the same line of arguments, the learned senior counsel relied to the decision of the Hon'ble Supreme Court reported in "(2006) 9 Supreme Court Cases 446 (Ram Bachan Rai and others Vs. Ram Udar Rai and others)", wherein the Hon'ble Supreme Court has held that filing of execution application beyond the period of limitation of 12 years was time barred. According to the Hon'ble Supreme Court of India, filing of appeal and Civil Revision Petition against the ex parte decree, cannot extend the time beyond the period of 12 years and found fault with the Executing Court which held that the period of limitation had to be reckoned with effect from the date of dismissal of the civil revision.

17. The learned counsel would also rely on the decision of the Hon'ble Supreme Court of India, reported in "(1993) 2 Supreme Court Cases 507" (Chiranjilal Shrilal Goenka Vs. Jasjit Singh and others), with reference to paragraph 18 of the judgment, wherein the Hon'ble Supreme Court has held that the decree passed by the Court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a Court is a nullity and is non est.

18. On the same line, the learned senior counsel relied upon another decision of the Hon'ble Supreme Court reported in 2006(10) SCC 96 (A.Jitendernath versus Jubilee Hills Co-op. Housing Building Society and another)", wherein, the Hon'ble Supreme Court held that the award passed by an authority without jurisdiction is a nullity and in the eye of law, it never existed.

19. Further reliance was placed on the decision reported in "2010(3) SCC 732 (Secretary and Curator, Victoria, Memorial Hall versus Howrah Ganatantrik Nagrik Samity and others)", with reference to paragraphs 40 to 42, which are reproduced hereunder:

"40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide State of Orissa Vs. Dhaniram Luhar AIR.2004 SC 1794; and State of Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573].

"41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026;

U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

"42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

20. Lastly, learned senior counsel would rely upon a decision reported in 2007 (10) SCC 296 (Gannmani Anasuya and others versus Parvatini Amarendra Chowdhary and others)", wherein, in para 27, it has been held by the Hon'ble Supreme Court as under:

"27. In terms of Section 3 of the Limitation Act, it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded. In any event, the said evidence was admissible for the purpose of contradicting a witness, which being a relevant fact should have been considered in its proper perspective. If the contents of Ex. B-8 were accepted, it was not for the High Court to consider the consequences flowing therefrom, and, thus, but the fact whether the figure(s) contained therein could be verified from the books of account might not be very relevant. Whether, it would be in consonance with the pleadings of Appellants was again of not much significance if it can be used for demolishing the case of Plaintiffs and Defendant No.1 If the figures contained in Ex. B-8 were accepted, it was for Defendant No. 1 to explain the same and not for Appellants. The High Court, in our opinion, thus, committed a manifest error in not taking into consideration the contents of Ex. B-8 in its proper perspective."

21. According to the learned senior counsel, the above decision is the answer to the objections raised by the learned counsel appearing for the respondents 1 to 8 that in the counter affidavit filed in E.A.No.364 of 1999 seeking enlargement of time, no petition was raised in regard to limitation aspect and therefore, it is not open to the petitioner to raise the same. The learned senior counsel would submit that regardless of the availability of pleading, the law of limitation will have to be appreciated and applied by the Courts.

22. On the other hand, the learned counsel appearing for the respondents 1 to 8 would rely on the following decisions in support of his contentions, resisting the claim of the revision petitioner, viz.,

i) "AIR 1989 SC 2073 (Johri Singh versus Sukh Pal Singh and others)". Relying on this, the learned counsel would submit that the Court has discretionary power to enlarge the period from time to time even though the period originally fixed and granted might have expired.

ii) As regards the objections raised by the learned counsel appearing for the respondents that whether it is open to the transferee pendente lite to offer resistance or obstruction, the learned counsel would rely upon "(1998) 3 SCC 723 (Silverline Forum Pvt.Ltd. versus Rajiv Trust and another)", wherein, the Hon'ble Supreme Court has observed as under in para 10:

"10. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding tht point the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Execution of such a transferee from raising further cotentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."

iii) "2004(3) SCC 458 (Union of India and others versus West Coast Paper Mills Ltd. & another)", wherein, the Hon'ble Supreme Court, in extenso, has defined the doctrine of 'merger'. The learned counsel would particularly rely on the observation made by the Hon'ble Supreme Court in "Kunhayammed case", which is extracted below:

"In Kunhayammed (supra), this Court held:
"12. The logic underlying the doctrine of merger

is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below."

iv) 2004(8) SCC 724 "(Chandi Prasad & others versus Jagdish Prasad & others)", wherein, in regard to the doctrine of 'merger', the Hon'ble Supreme Court has observed as under:

"MERGER:

The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.

It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court."

v) "AIR 2008 SC 1997 (Usha Sinha versus Dina Ram and others)", wherein, in regard to the right of a transferee pendente lite, the Hon'ble Supreme Court has held as under in paragraphs 18,19,21 and 24:

"18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

"19. In *Silverline Forum Pvt. Ltd. v. Rajiv Trust*, (1998) 3 SCC 723, this Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court.

"20.

"21. We are in respectful agreement with the proposition of law laid down by this Court in *Silverline Forum*. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

"22 to 23.

"24. As observed in *Silverline Forum*, a limited inquiry in such cases is whether the transferee is claiming his right

through the judgment-debtor. In our judgment, the High Court was also right in observing that if the appellant succeeds in the suit and decree is passed in her favour, she can take appropriate proceedings in accordance with law and apply for restitution. That, however, does not preclude the decree holder from executing the decree obtained by him. Since the appellant is a purchaser pendente lite and as she has no right to offer resistance or cause obstruction and as her rights have not been crystallized in a decree, Rule 102 of Order 21 of the Code comes into operation. Hence, she cannot resist execution during the pendency of the suit instituted by her. The order passed by the High Court, therefore, cannot be said to be illegal, unlawful or otherwise contrary to law."

vi) (2014) 5 MLJ 739 "(Elumalaiyan versus Lakshmi and another)", wherein, the learned counsel would draw the attention of this Court to paragraph 6 as regards the right of pendente lite purchaser, which is extracted below:

"6. The obstruction made by the revision petitioner should have been raised and the application filed by him should have been thrown out at the threshold itself, based on his own plea that, he derived the right from a party to the suit, namely the judgment debtor during the pendency of the suit. The transaction being one pendente lite, is hit by the principle of doctrine of lis pendens. Without even considering the same, the learned Principal District Munsif seems to have wasted about two years for conducting an enquiry in such an application, when such an application, on its face itself is not maintainable. During the enquiry in E.A.No.4/2010, which according to the above said observation of this court, should have been thrown out at the threshold, the revision petitioner was allowed to file another application, namely E.A.No.48 of 2012 for reopening the enquiry in E.A.No.4 of 2010 for adducing further evidence. The learned Principal District Munsif, seems to have no control over the proceedings by allowing the judgment debtor to set up a third party to raise obstruction and allowed an abuse of process of court to be made by the revision petitioner by preventing the execution of the

decree for more than two years by simply prolonging the enquiry in E.A.No.4/2010, where such an enquiry was not at all warranted."

vii) 2015-4-L.W.777 "(State of Tamil Nadu, rep. by Chief Revenue Controlling Authority and another versus M/s.Prathishata Associates)", wherein, the learned counsel would draw the attention of this Court to the observation made by the Division Bench of this Court which is extracted below:

"8. The contract for sale does not, of itself, create any interest in or charge on such property. Therefore, it is clear that the agreement holder by virtue of the sale agreement is not given any right in respect of the property."

viii) "2016 (4) CTC 250 (V.G.Naidu @ Govindasamy Naidu versus Pahlraj Gangaram @ Pahlraj Rai)", wherein, a learned single Judge of this Court, has observed in paragraph 31 as under:

"31. The judicial system should eradicate the ability of one party to cause harassment to the other party by using the procedure as a tool. The judicial system cannot be permitted to be used as a feeding ground to get profit out of the litigation, by adopting delaying tactics. If greater public trust and confidence is to be built, compensation to the party, who suffered, is essential. Therefore, this Civil Revision Petition has to be dismissed with compensatory cost."

23. This Court has given its anxious consideration to the rival submissions put forth by the learned senior counsel for the petitioner and the learned counsel for the respondents 1 to 8 and also to the materials and pleadings placed on record.

24. The first and foremost submission of the learned senior counsel for the revision petitioner is that the decree of the trial Court in O.S.No.4 of 1983 dated 1.8.1996 is not executable in the eye of law since the said decree had imposed a condition of refund of advance amount of Rs.40,000/- to the revision petitioner herein, within a period of three months from the date of decree, which was not complied with by the plaintiffs in the suit who are respondents 1 to 8 herein. According to the learned senior counsel, since no interim order has been passed by the appellate Court, the decree became executable and

therefore, filing of execution petition on 30.4.1999 was hopelessly time barred and cannot be maintained. The said submission made on behalf of the learned senior counsel may look attractive in the first blush, nevertheless when the same is critically examined in view of the decisions cited on behalf of the learned counsel appearing for the respondents 1 to 8, the decree passed by the trial Court had been appealed against and the appellate Court has passed judgment in Appeal Suits in A.S.Nos.146 of 1986 and 145 of 1989 only on 6.8.1993 and in the appeals, the appellate Court had modified the decree passed by the trial Court. Once the decree is modified by the appellate Court, the doctrine of 'merger' comes into effect and therefore, the question of executing the decree immediately would not arise. Even otherwise, as held by the Courts as stated supra, irrespective of the fact whether there was modification or not, once the decree and judgment passed by the appellate Court, the decree and judgment of the trial Court merges with the same.

25. As regards the objections raised by the learned senior counsel appearing for the petitioner that the execution petition filed beyond the period of 12 years from the date of original decree dated 1.8.1996, cannot be countenanced both on law and on facts for the simple reason that the appellate Court has passed decree and judgment only in 1993 and in fact, thereafter, the revision petitioner has filed the revision before the appellate Court in the aforesaid appeals and that the revision petition was pending and the same was disposed of only by the common order dated 13.12.2001 in C.R.A.Nos.3 and 4 of 1994. Therefore, by no stretch of legal standards, the contention put forth by the learned senior counsel that the execution petition was beyond the period of 12 years and the same ought to have been dismissed as not maintainable is valid and acceptable proposition of law.

26. The next important contention raised on behalf of the learned senior counsel is in regard to extension of time granted by the Executing Court, which according to him, is without jurisdiction and such extension is amounted to alteration of original decree and judgment of the trial Court. As relied on by the learned senior counsel in one of the citations cited supra, the Court has discretion to extend time on the basis of facts and circumstances of the case and particularly, such discretion is vested in the Courts under Section 148 of CPC. In the instant case, when the trial Court's decree has been merged with the decree and judgment of the appellate Court dated 6.8.1993 and the appellate Court having not fixed any time, the extension granted by the Executing Court, cannot be construed as one of the alterations of the decree and the judgment of the trial

Court since admittedly, such decree and judgment has been merged with the appellate decree and judgment. Therefore, this contention of the learned senior counsel has to be rejected being fallacious and flawed.

27. Learned senior counsel would further submit that as per Article 136 of the Limitation Act, if no time is fixed, then the said Article can be resorted to within a period of three years. According to the learned senior counsel, application ought to have been filed before 5.8.1996 on behalf of the respondents, which they failed to do so and therefore, now they cannot seek execution of the decree. Such submission, in the opinion of this Court, is extraneous to the issue raised in the Revision Petition and therefore, the same does not merit any serious consideration for more than one reason. Firstly, the execution petition can be filed within a period of 12 years which was in fact, filed within the limitation period and moreover, at the instance of the revision petitioner, a review petition has been filed before the appellate Court which was pending and disposed of only on 13.12.2001.

28. Further contention put forth by the learned senior counsel appearing for the petitioner that the decree of the trial Court has not been modified, cannot be factually countenanced since the appellate Court had modified the decree of the original Court. Be that as it may, as concluded above, even regardless of the fact that whether the trial Court decree was modified or not, once the appellate Court disposed of the appeals, the decree and judgment of the trial Court would disappear and merge with the appellate Court's decree and judgment. Therefore, even this argument cannot be countenanced and liable to be rejected.

29. As regards the contention of the learned senior counsel, the original suit was filed against the gratuitous transaction as the subject matter of the suit, was execution of the testament, namely, Will and therefore, there was no bar for sale of the property. The reliance placed on Section 53(A) of the Transfer of Property Act in regard to part performance, cannot also be appreciated as being a valid argument in the facts and circumstances of the case. The revision petitioner, having the knowledge of the pendency of the suit, had entered into agreement with the father of the respondents 1 to 8 and the risk of being disentitled to the property on the outcome to the suit proceedings, cannot have better and valid right over the rights of the original transferor, such plea on the part of the learned senior counsel is only a desperate attempt to advance

the case of the civil revision petitioner, which plea cannot be clothed with any legal sanctity.

30. On the other hand, as rightly contended by the learned counsel appearing for the respondents 1 to 8, that the Courts have uniformly held that the limited rights of the transferee pendent lite on the principle of lis pendens. Such limited right cannot be stretched to obstruct and resist the full claim of the decree holders for executing the decree in their favour. In fact, the Courts have deprecated such obstruction and the learned Judge of this Court has rightly observed in paragraph 13 of his judgment (2016 (4) CTC 250) which was reproduced above on the said aspect.

31. This Court is also in agreement with the arguments advanced by the learned counsel for the respondents 1 to 8 that in the absence of challenge to the order passed by the Executing Court in E.A.No.364 of 1999 and what is challenged in revision petition is only consequential order of delivery in E.P.No.286 of 1989, therefore, present revision petition is not maintainable on that count alone. However, the learned senior counsel having realized legal weakness in preferring the said revision petition against the order in execution petition by side-stepping the order passed by the Executing Court in E.A.No.364 of 1999 had come forward with legal plea that the order passed by the Executing Court being without jurisdiction and the same is a nullity and non-est and the same need not be challenged. Such specious argument has to be discountenanced, since this Court has concluded that after merger of the trial Court decree with the appellate Court decree, the decree holder had approached the Executing Court for extension of time since that was the only course open to execute the decree.

32. The arguments advanced by the learned senior counsel that the decree holders had lost right to execute the decree in view of the expiry of the time fixed by the trial Court, has to be rejected as also being devoid of merit and substance in view of the doctrine of merger to be applied as held by the various Courts including the Hon'ble Supreme Court in the decisions cited supra. Therefore, in all fours, the grounds and issues raised and the arguments advanced in support of the Civil Revision Petition, have no merit and the same have to be rejected as legally untenable and unsustainable.

33. For the foregoing reasons, this Court does not find any worthy grounds to entertain the revision petition. Accordingly, the Revision Petition fails and the same is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

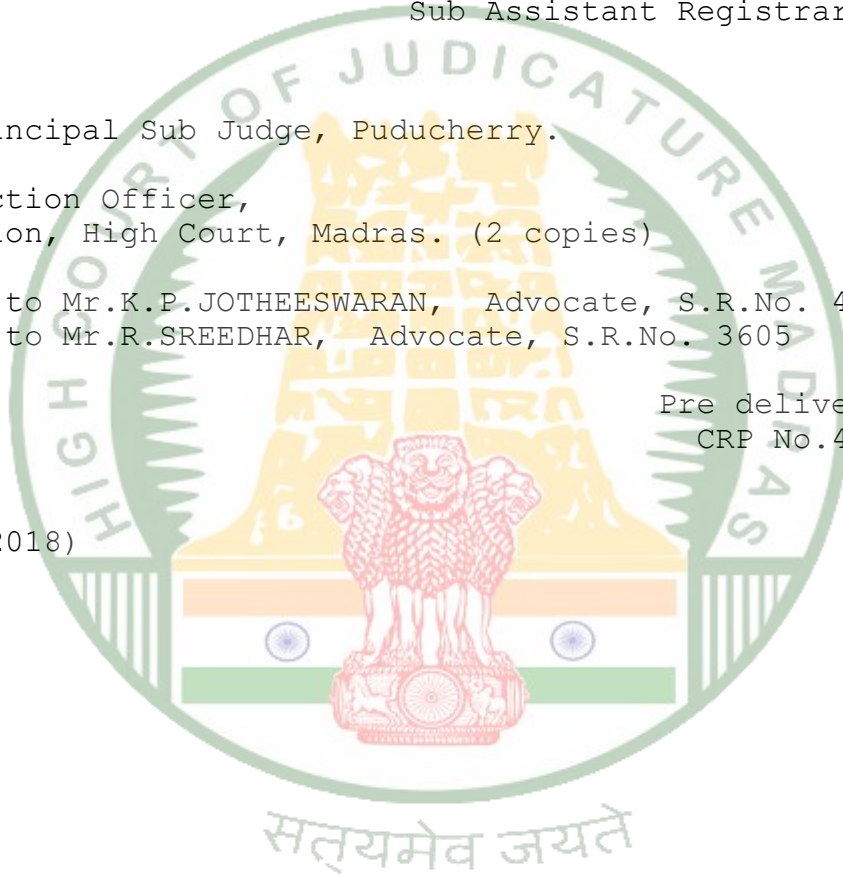
suk
To

1. The Principal Sub Judge, Puducherry.
2. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

+2cc to Mr.K.P.JOTHEESWARAN, Advocate, S.R.No. 4365 & 3579
+1cc to Mr.R.SREEDHAR, Advocate, S.R.No. 3605

Pre delivery Order in
CRP No.4385 of 2014

PVS (CO)
TR(06/02/2018)



WEB COPY