

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(NPD).No.982 of 2017

and

C.M.P.No.4855 of 2017

Kannan

..

Petitioner

vs.

1.Venkatachalam

2.Sadasivam

3.Subramanian

4.Balayya

..

Respondents

Civil Revision Petition filed under Article 115 of CPC, to set aside the fair and decretal order dated 03.11.2016 in E.A.No.35/2014 in E.A.No.334 of 2012 in E.P.No.15 of 2012 in O.S.No.356 of 1989 on the file of the II Additional District Munsif, Puducherry.

For Petitioner

... M/s.G.Rajan

For Respondents

... Mr.R.Sunil Kumar
for R1 to R4

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant against the fair and decretal order dated 03.11.2016 in E.A.No.35/2014 in E.A.No.334 of 2012 in E.P.No.15 of 2012 in O.S.No.356 of 1989 on the file of the II Additional District Munsif, Puducherry.

2. The respondents herein, as plaintiff, has filed a suit against the Civil Revision Petitioners in O.S.No.356 of 1989 before the II Additional District Munsif, Pondicherry, praying for a declaration declaring the plaintiffs are the absolute owners of the schedule property, for recovery of possession and for removal of the super structure raised thereon. An Advocate Commissioner was appointed to identify and locate the encroachment, if any, in "B schedule property" comprised in R.S.No.232/1B and his report and sketch were marked as Ex.C.1 to C3.

3. The suit is allowed and the plaintiffs are declared as the owners of the property mentioned as R1 in Ex.C3 and entitled to recover vacant possession of the same from the defendant, further removal of superstructure constructed in the property was also ordered and six months time is granted for removal of the same from the encroached property and hand over the same to the plaintiffs/respondents.

4. Aggrieved against the judgment and decree passed by the trial court, the defendant has filed an appeal before the I Additional Sub Judge, Pondicherry and the appeal was dismissed by the First Appellate Court with slight modification and the defendants are directed to hand over delivery of possession after removal of superstructure to the plaintiffs/respondents.

5. Thereafter, the plaintiffs/respondents filed E.P.No. 15 of 2012 praying to deliver the possession after removal of the superstructure thereon to the decree holders, against which, the defendant/petitioner herein filed E.A.No.334 of 2012 under section 47 of CPC r/w.Sec.151 of CPC seeking to dismiss the E.P.No.15 of 2012 since the decree passed by the lower Court is having legal infirmity and not executable in nature. Thereafter, E.A.No.35 of 2014 was filed by the revision petitioner to issue summons to the Settlement Officer from the Office of the Director of Survey and Land Records, Saram, Puducherry, for producing the certified copies of settlement Register and FMB in respect of schedule mentioned properties and to give evidence thereon. The same was resisted by the revision petitioners by filing a counter.

6. After considering the arguments advanced on either side and materials available on record, the learned trial Judge dismissed the same by observing that there is no necessary to permit the petitioner to summon the Director of Survey and Land Records, Saram, Puducherry for producing the certified copies of settlement Register and FMB.

7. Against that order passed by the trial Court in E.A.No.35/2014 in E.A.No.334 of 2012, the present Civil revision petition has been preferred by the petitioner/defendant.

8. The learned counsel appearing for the petitioner/defendant would submit that once the decree attains finality, there is no challenge against the same and now, the Appellate Court cannot go beyond the decree. The trial Court has held that the defendant/petitioner has not stated anything about as to why the personal appearance of Director of Survey and Land Records is required and finally opined that the records sought to be relied on by the defendant/petitioner can very well be obtained by way of certified copies and it is not necessary to prove the contention of the records by examining the official, as the documents would speak itself. He would further contend that the respondent herein are attempting to take possession of the property comprised in S.No.232 /1A3 which is not related to the property described in the plaint schedule, as such the property claimed is different from the property sought to be taken possession under execution petition.

9. It is his further contention that summoning of the officers along with pertinent records related to S.No.232/1B and 232/1A3 including the details of the sub division, exact extent and measurement would assist the court to arrive at a finding whether the property sought to be taken possession under the execution is the decreetal property or not and hence he prayed to set aside the order of the court below.

10. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

11. It is not in dispute that the respondents/plaintiffs have filed a suit against the petitioner/defendant herein and the same was decreed, against which, an appeal was preferred and the same was also dismissed. The respondents/plaintiffs filed Execution Petition, against which, the petitioner/defendant has filed the applications and the same was dismissed, against which, the present revision is preferred.

12. On perusal of the records and considering the submissions made on both sides, this Court finds that there is no reason to find any different view with the fair and decretal order passed by the Execution Court. Hence, this revision is liable to be dismissed, however the petitioner is at liberty to take defence in the E.A.No.334 of 2012 in E.P.No.15 of 2012.

13. It is made clear that since the suit is of the year 1989 and the Execution proceedings are pending long back from the year 2012, the Execution Court is directed to dispose the case as early as possible preferably within a period of six months from the date of receipt of a copy of this order.

P.VELMURUGAN.J,

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14. The Civil Revision Petition is dismissed with the above direction.

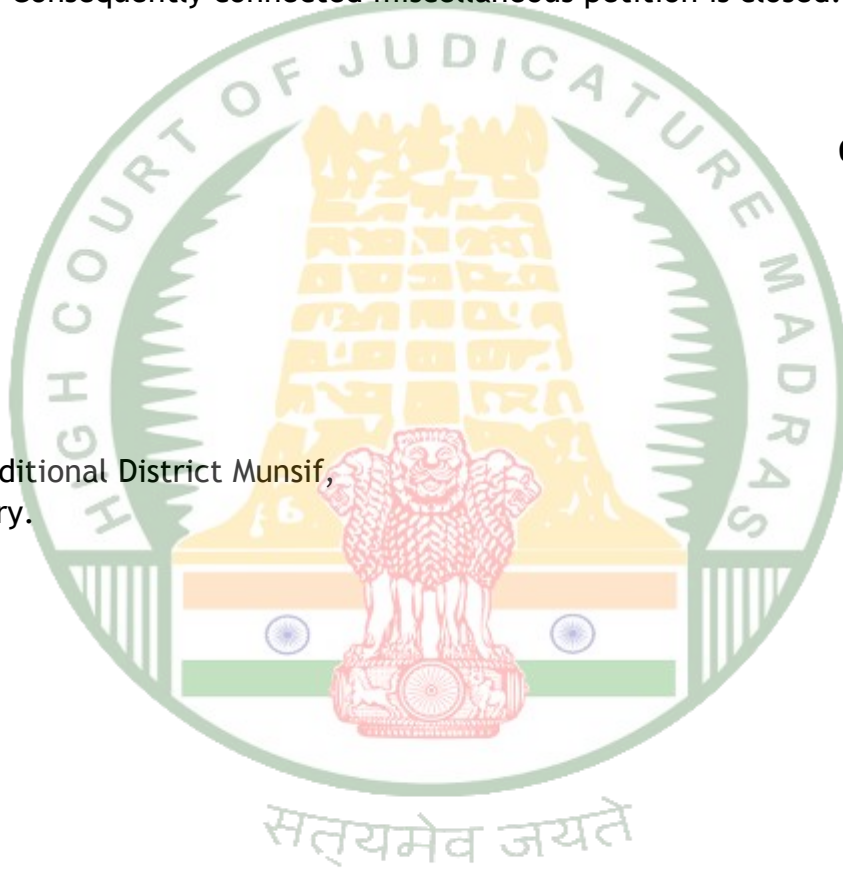
No costs. Consequently connected miscellaneous petition is closed.

04.04.2018

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To

The II Additional District Munsif,
Puducherry.



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