

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(NPD).No. 3261 of 2016 and

1. Vijayalakshmi
2. Doss

... Petitioners/ Petitioners/
JDs/Defendants 1&2

1. Pushparani

Vs.
... Respondent/Respondent/
DH//Plaintiff

2. Devaraj
3. Murali
4. Nagaraja
5. Vanitha

... Respondents/Respondents/
JDs 3 to 6/Defendants 3 to 6

Prayer: Civil Revision Petition filed under Section 227 of Civil Procedure Code to set aside the order in E.A.No.1019 of 2016 in E.P.No.4361 of 2014 in O.S.No.2978 of 1999, dated 31.08.2016, on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.G.Ravisankar

For Respondent-1 : Mr.N. Srinivasulu

O R D E R

The respondent/plaintiff filed the suit against the revision petitioner in O.S.No.2978 of 1999 for partition and permanent injunction before the XI Assistant City Civil Court, Chennai and preliminary decree was passed in favour of the respondent/Decree Holder, dated 18.07.2003 and challenging the preliminary decree, the Judgment Debtors/Defendants 1&2 have preferred the appeal in A.S.No.488 of 2007 on the file of the VI Additional District Judge, Chennai. The first appellate court confirmed the judgment and decree passed by the Trial Court, against which the petitioner herein filed second appeal before this Court. This court while deciding the second appeal in S.A.No.1347 of 2008, dated 02.03.2011 modified the judgment and decree passed by the courts below as follows:

"3.that before executing the final decree the 1st respondent/plaintiff or the respondents 3 to 6/defendants 3 to 6 to approach the authority under section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 to get suitable orders".

2. According to the decree passed by this Court, before executing the final decree, the plaintiff or the respondents 3 to 6 have to approach the Authority under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 for getting suitable orders and the said finding was not challenged by filing further appeal. Subsequently, final decree was passed on 10.10.2011 and thereafter, the Decree Holder/Plaintiff has filed the Execution Petition in E.P.No.4361 of 2014 against the Judgment Debtors/Defendants before the executing Court to deliver the vacant possession of the schedule mentioned property in favour of the Decree Holder. The revision petitioners/defendants have filed the application under Section 47 of Civil Procedure Code stating that the final decree was passed by the trial court without complying with the condition imposed this Court in S.A.No.1347 of 2008, dated 02.03.2011.

3. The Executing Court has failed to consider as to whether the condition imposed by this Court in S.A.No.1347 of 2008, dated 02.03.2011 was complied with or not and court below has simply dismissed the application under Section 47 proceedings without giving any valid reason. Being aggrieved by the order passed by the E.P. Court in E.A.No.1019 of 2016, dated 31.08.2016, the revision petitioners/defendants have approached this Court by way of filing this Civil Revision Petition.

4. The learned counsel for the petitioners would submit that this Court, while deciding the Second Appeal in S.A.No.1347 of 2008, modified the judgment and decree passed by the trial court and the First Appellate Court. The respondent/plaintiff therein filed final decree application without getting written permission under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, as per the decree granted by this Court, which shows the condition has not been complied with before passing of the final decree. Therefore, the final decree dated 10.10.2011 is nullity and it cannot be enforced and therefore, EP itself is not maintainable.

5. Perused the available records. A careful reading of the judgment of this Court in S.A.No.1347 of 2008, dated 02.03.2011 which shows that this Court, while passing the judgment, modified the judgments of the courts below that before executing the final decree, the first respondent/plaintiff or the respondents 3 to 6/defendants 3 to 6 therein have to approach the authority under Section 29 of the above said Act for getting suitable orders. Subsequently, final decree was passed on 10.10.2011. Thereafter, the plaintiff filed Execution Petition in E.P.No.4361 of 2014 for executing the final decree. During the pendency of the Execution Petition, the revision petitioners/defendants filed Execution Application in E.A.No.1019 of 2016 under Section 47 of CPC stating that the final decree itself is nullity and the

same cannot be executed. It is not the judgment of this Court that before passing final decree, the plaintiff should obtain permission under Section 29 of the said Act and judgment of this Court is that before executing the final decree, the plaintiff or the other defendants 3 to 6 have to approach the authority under Section 29 of the Act to get suitable order. Hence, final decree is valid and the only condition is that before executing the decree, permission has to be obtained. Now, the Execution Petition in E.P.No.4361 of 2014 is pending and still it has not been executed. Therefore, the executing Court is directed to take care of the condition imposed by this Court in decree dated 02.03.2011 before executing the final decree.

6. Since the execution petition is pending, the parties can approach the authority in order to comply with the condition imposed by this Court in decree dated 02.03.2011 in S.A.No.1347 of 2008 before passing the order in Execution Proceedings, failing which, the EP court can proceed with the Execution Petition in accordance with law.

7. With the above observations and direction, the Civil Revision Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msm

To

1. The XI Assistant Judge,
City Civil Court, Chennai.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr.G. Ravishankar, Advocate SR.38991

+ 2 ccs to Mr. N. Srinivasulu, Advocate Sr.39501

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NA(CO)

EU(30/07/2018)