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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 05.06.2018

Pronounced on: 03.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(MD) (PD) No.481 of 2018
and C.M.P.(MD) No.2130 of 2018

Muniyappan ... Petitioner /Respondent/ Petitioner/Decree
Holder/Plaintiff

-vs-

1. Karuppaiyah
2. Angusamy

... Respondent/Petitioner/Respondent/Judgment
Debtors/Defendants

Prayer: Civil Revision is filed under Article 227 of the Constitution of India to strike off the petition in E.A.No16 of 2018, in E.P.No.17 of 2015 in O.S.161 of 2007 on the file of the District Munsif, Sivagangai and pass such further or other orders as this Honble Court.

For Petitioner : Mr.S.Muniappan
Party-in-person

For Respondents : Mr.R.Vijayakumar

O R D E R

For the sake of convenience, the parties are referred to as per their original nomenclature mentioned in the suit.

2. The revision petitioner/party-in-person is the plaintiff in the suit in O.S.161 of 2007 on the file of the District Munsif, Sivagangai and in the suit, the plaintiff sought for partition amongst various other relief. The suit was partly decreed in favour of the plaintiff on 28.02.2009, against which, both the plaintiff and the defendants 7 and 8 had preferred appeals in A.S.No.41 and 42 of 2010 before the learned Sub-Judge, Devakottai. The First Appellate Court, after perusing the entire records, had dismissed the appeal filed by the defendants 7 and 8 and allowed the appeal filed by the plaintiff.

3. Thereafter, the defendants 7 and 8 preferred Second Appeal in S.A.(MD) No.683 of 2011 before this Court and this Court was pleased to dismiss the second appeal on 14.03.2014. Pursuant to the services, the plaintiff had filed E.P.No.17 of 2015 in O.S.No.161 of 2007 for execution of the decree passed in the suit and the same was preliminarily allowed by the Trial Court. Subsequent thereto, the



defendants 7 & 8 have filed E.A.No.16 of 2018, seeking to dismiss the execution petition. Pending the same, the plaintiff has filed this petition, seeking to strike off the execution application.

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4. It was the case of the plaintiff that the defendants 7 & 8 already preferred a petition before this Court in C.R.P.(MD) No.209 of 2016 against the execution proceedings, which was dismissed by this Court after due consideration and therefore, the defendants 7 & 8 cannot attempt to reagitate the same by filing E.A.No.16 of 2018 under Section 47 of CPC. It was the further case of the petitioner that the said application was filed only with an intention to drag on the proceedings so as to curtail the concerned Court not to execute the order. This Court, while dismissing the civil revision petition on 11.04.2017, had permitted the execution proceedings to go on and as such, the filing of E.A.No.16 of 2018 would be an abuse of process of law.

5. The plaintiff stated that the defendants 7 & 8, having lost almost in all Courts, as a last chance, has adopted the art of throwing stone in water in order to some how succeed in the case. Though the Courts had considered all the aspects and passed the decree, the defendants have terms the findings as unenforceable, which would amount to contempt of Courts and they cannot claim any rights in the partition. Contending that the defendants have been filing applications one after the other, thereby wasting the precious time of the Court, it was pleaded that the application filed in E.A.No.16 of 2018 in E.P.No.17 of 2015 is liable to be rejected and this petition is to be allowed in the interest of justice.

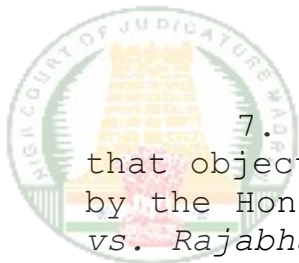
6. The party-in-person/plaintiff has submitted that no objection can be entertained to analyze whether the decree was incorrect in law or on facts during execution proceedings and to emphasize the said submission, he has relied upon the judgment of the Hon'ble Calcutta High Court in the case of *M/s.India Steam Laundry (P) Ltd vs. Sisir Kumar Deb*, reported in (2012) 8 SCC 706, wherein it has been held as follows:

"10. This rule evidently relates to suits. It is a well settled rule that in appealable cases issues arising in a suit should ordinarily be tried together and decided. The reason is to avoid piecemeal trial, protracted litigation and remand of the case where the appellate court differs with the decision of the trial court on the preliminary issue upon which the trial court has disposed of the suit. Sub rule (1) incorporates the normal rule recognized even under the un-amended rule that all the issues arising in a suit must ordinarily be tried together



notwithstanding that a case can be disposed of on a preliminary issue. Sub rule (2) provides a limited exception to that ordinary rule of trial. Sub rule (2) furthermore is discretionary and not mandatory both In respect of the formation of the opinion that the case or a part of it can be disposed of by a trial as a preliminary Issue and as to its trial first on a preliminary issue. In view of the Division Bench decision reported in 18 CWN 343, section 141 CPC does not make applicable to proceedings in execution all the procedure provided by the court in regard to suits. The law laid down by this ruling does not appear to have undergone any change even after the 1976 Amendment. A determination under section 47 CPC was previously included within the definition of 'decree' contained in section 2(2) of the Code. Even then, such a decree was not appealable. After the 1976 Amendment, determination of any question within section 47 CPC does not come within the preview of a decree. By the 1976 Amendment, sub section (2) of section 47 has also been deleted. Sub section (2) was Introduced in this section in order to give legislative sanction to the practice followed by the courts in treating an application under this section as a suit or a suit as an application. But by reason of the deletion of sub section (2), the said discretionary powers have been withdrawn by the legislature. Now, all questions arising between the parties in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, should be disposed of under section 47 and not by a suit and an order made in such application is not a decree for which an appeal would lie. There is virtually nothing in the Code which makes it obligatory upon an executing court to decide an application under section 47 CPC on all issues at a time or to forbid the executing court to decide and dispose of the same on the question of maintainability even though no evidence is required to be gone into for the purpose of deciding the question of maintainability. The decree holder respondent has raised a question of jurisdiction of the executing court to go into the questions that have been raised in the instant application under section 47 CPC. In paragraph 6 of the decision and cited on behalf of the respondent, it has been held :

"A court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding



7. It was further put forth by the party-in-person/plaintiff that objection cannot be raised in the execution proceedings as held by the Hon'ble Supreme Court in the case of *Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others*, reported in AIR 1970 SC 1475, in which the Hon'ble Supreme Court was pleased to observe as under:

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"6. A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record : where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In *Jnanendra Mohan Bhaduri & Anr. v. Rabindra Nath Chakravarti* (2) the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction.

8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the court which passed the decree. If the decree is on the face of the record without jurisdiction and the question



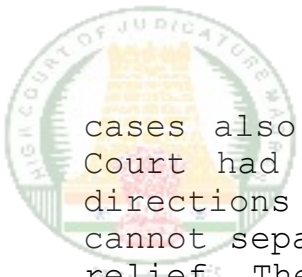
does not relate to the territorial jurisdiction or under s. 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.

9. The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends', and the objection does not appear on the face of the record, the executing Court cannot enter upon and enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our judgment, cannot be sustained."

8. By placing strong reliance on the above judgments, it was represented by the plaintiff that the points raised in the application were already raised by the judgment debtor in the Trial Court and decided against him and therefore, the application was not maintainable and it should be summarily rejected.

9. Per contra, learned counsel for the respondents / defendants 7 & 8 have vehemently contended that the 8th defendant is the son-in-law of the 7th defendant and the suit property never belonged to one Chinnathambiya Pillai, as it was a punja vacant site. One Ponnuthurai had sold out the western portion of the suit property to the 7th defendant on 20.07.2000 for valid consideration and the remaining eastern portion has been in possession and enjoyment of the 7th and 8th defendants for a pretty long period and without the knowledge of the defendants 7 & 8, the plaintiff had taken steps to cancel the patta, which stood in their name.

10. It was further contended that the partition cannot be proceeded based on the measurement in the patta, as several persons were residing nearby areas, who were not parties to the lis and therefore, the measurement has to be taken after considering their



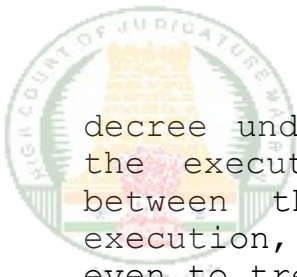
cases also and not on the basis of patta. It was stated that this Court had issued several directions in the second appeal and the directions have to be complied with one by one and the plaintiff cannot separate the particular relief and seek for execution of that relief. The main relief sought for in the suit was partition of the property and unless final decree is passed, no final decision can be arrived at with respect to the partition of the plaintiff and therefore, the execution petition is not maintainable at this stage and this petition is liable to be dismissed

11. I have heard the party-in-person and the learned counsel for the respondents/defendants 7 & 8 and also perused the entire materials available on record.

12. In this petition, the petitioner sought to strike off the application filed by the defendants 7 & 8 under Section 47 of CPC. Under Section 47 of the Civil Procedure Code, all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Further, all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree.

13. The point for consideration in this civil revision petition is as to whether the execution application is liable to be rejected on the ground that it was filed only with an intention to drag on the proceedings, as the defendants lost his case in all Courts. It is appropriate to state that Section 47 CPC refers to one of the most important provisions in Part II of the Code of Civil Procedure, which deals with the Execution of decrees. It makes it incumbent on the executing Court to decide on all the intricacies related to the decree so that it is fully satisfied. The provision aims to provide an inexpensive and expeditious remedy for resolution of disputes between the parties to the suit in execution proceedings, thus preventing needless and unnecessary litigation. It is composed of two essential elements which are namely first that the questions arise between the parties to the suit in which the decree was passed, and second that those questions must relate to the execution, discharge or satisfaction of the decree.

14. It has been consistently held in a series of judicial pronouncements that there should be a wide and liberal construction of Section 47 of the Code so as not to drive the parties to separate suit and prolong litigation. Section 47 of the Code is couched in a very wide language. The very object is to avert another suit concerning the



decree under execution. The requirement of this provision is that the executing Court alone must determine all questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and authorizes it even to treat the proceeding as a suit.

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15. It is most appropriate to point out that the words "all questions arising" mean all questions which could properly arise or which could have properly been raised in the execution proceedings between the parties to the suit or their representatives. A careful reading of Section 47 CPC would decipher that the issues that arise after passing of a decree shall henceforth be determined only at the time of execution of the decree and the parties should not be driven to file a separate suit for deciding each and every case. There are certain power, duties and obligations on the part of the executing court and one of the main duties includes determination of the questions by the executing court. The procedure regarding the same has been duly provided under section 47 of the Code of Civil Procedure, 1908.

16. Let us analyze the present case on hand, keeping in mind the above principles. In the execution application, the defendants 7 & 8 have raised various objections for execution of the decree passed in the suit, one of which was that the plaintiff should not be allowed to take into account the measurement mentioned in the patta, as the same would be detrimental to the welfare of the adjacent owners of the properties. Secondly, this Court had granted relief altogether to more than one person and as per Order XXI Rule 15, if the relief is granted sparingly to various persons, then it is sufficient to file only one petition on behalf of others and therefore, there is no bar for the defendants to file this application for dismissing the execution petition filed by the plaintiff. Thus, it is clear that the defendants 7 & 8 have raised various questions for determination and if the execution is allowed to be proceeded without answering all their queries, it would lead to institution of another suit, thereby defeating the very purpose of Section 47 CPC. The manner, in which the questions to be decided, has been vividly elucidated under the Act and therefore, in my considered view, it is not a fit case to strike off the execution application.

17. The judgments relied upon by the party-in-person have no relevancy to the facts of this case, inasmuch as those judgments have dealt with the case where objections were already raised during trial of the suit and the same were once again reiterated at the time of execution proceedings, which is not permissible in law, whereas in the present case, the defendants only wanted to remove the obstacles that lie in the way before execution of the order.



18. Hence, in view of the foregoing discussions and observations, no other conclusion than the one that this petition is liable to be dismissed and the petitioner is not entitled to the relief sought for in the petition, can alone be arrived at.

18. In the result,

a) this Civil Revision Petition is dismissed;

b) learned District Munsif, Sivagangai is directed to dispose of E.A.No16 of 2018, in E.P.No.17 of 2015 in O.S.161 of 2007, after considering the objections and upon hearing the submissions to be made on either side, within a period of one month from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar (CS-IV)

To:

1. The District Munsif,
Sivagangai.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.S.Muniappan, Party-in-Person, SR.No. 10436
+1cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No. 77136

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