



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 19.09.2018

Coram

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. (MD).Nos.904 and 905 of 2018
and

Tr.C.M.P. (MD).No.52 of 2017

and

C.M.P. (MD).Nos.3985 and 3986 of 2018
(in both C.R.Ps respectively)

and

C.M.P. (MD).Nos.1455 and 3065 of 2017
(In Tr.C.M.P)

C.R.P. (MD).No.904 of 2018

Ondimuthu @ N.O.Muthu

... Petitioner/15th Defendant

Vs.

1.Arulmigu Meenakshi Sundareswarar
Devasthanam, Madurai
Through its Executive Officer ...

1st respondent/
Decree holder

E.M.G.Soundararajan (died)
2.E.M.G.S.Indirani
3.E.M.G.S.Pothi Gopalakrishnan
4.E.M.G.S.Pothi Rajan
5.E.M.G.S.Arun Pothiraj
6.S.Rajeswari
7.Dr.E.M.G.S.Gopalakrishnan Pandian
8.E.M.G.S.Radhakrishnan Pandian
9.E.M.G.S.Muthumeenakshi
10.M.Ravishankar
11.M.Muralisankar

.... Respondents 2 to 11/
L.Rs of the 6th Defendant

(Respondents 6 to 11 are given up vide Court order dated 13.07.2018 made in CRP(MD).Nos.904 and 905 of 2018)

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code as against the fair and decretal order dated 27.11.2017 passed in E.A.No.45 of 2016 in E.P.No.77 of 2006 in O.S.No.123 of 1970 on the file of the I Additional Sub Court, Madurai.



C.R.P. (MD) .No.905 of 2018

Ondimuthu @ N.O.Muthu

... Petitioner/15th Defendant

Vs.

Arulmigu Meenakshi Sundareswarar
Devasthanam, Madurai
Through its Executive Officer

... Respondent/
Decree holder

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code as against the fair and decretal order dated 27.11.2017 passed in E.A.No.143 of 2016 in E.P.No.440 of 1990 in O.S.No.123 of 1970 on the file of the I Additional Sub Court, Madurai.

Tr.CMP(MD) .No.52 of 2017:

Arulmigu Meenakshi Sundareswarar
Devasthanam, Madurai
Through its Executive Officer

... Petitioner/Petitioner

-Vs-

E.M.G.Soundararajan (died)

- 1.E.M.G.S.Indirani
- 2.E.M.G.S.Pothi Gopalakrishnan
- 3.E.M.G.S.Pothi Rajan
- 4.E.M.G.S.Arun Pothiraj
- 5.S.Rajeswari
- 6.Dr.E.M.G.S.Gopalakrishnan Pandian
- 7.E.M.G.S.Radhakrishna Pandian
- 8.E.M.G.S.Muthumeenakshi
- 9.M.Ravisankar
- 10.M.Muralisankar
- 11.Ondimuthu @ N.O.Muthu

... Respondents 1 to 11/
Respondents 1 to 11

12.The District Collector,
Madurai District,
Madurai.

... Proposed respondent/
12th respondent

(12th respondent is impleaded as per the order of this Court dated 06.09.2018 vide C.M.P. (MD) .No.1454/2017 in Tr.CMP(MD) .No.52/17)

Prayer in Tr.CMP. (MD) .No.52 of 2017: Civil Revision Petition filed under Section 24 of Civil Procedure Code to withdraw E.P.No.77 of 2006 in O.S.No.123 of 1970 on the file of I Additional Subordinate Court, Madurai to any other regular Subordinate Judges Court at Madurai.



CRP.(MD).Nos.904 & 905 of 2018

For petitioner : Mr.S.Subbiah, Sr. Counsel
for Ms.J.Anandavalli
For respondents : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.K.Govindarajan for R-1
(in both C.R.Ps)
Mr.K.Srinivasan, Sr. counsel for
Mr.G.Prabhu Rajadurai for RR-2 to 5
for RR-6 to 11-Given up (in
CRP(MD).No.904 of 2018)

Tr.C.M.P.(MD).52/17

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.K.Govindarajan
For Respondent No.11 : Mr.S.Subbiah, Sr. Counsel
for Ms.J.Anandavalli
Mr.G.Prabhu Rajadurai for RR-1 to 3
No appearance for R-4
For 12th respondent : Mr.A.K.Baskara Pandian
Special Government Pleader

COMMON ORDER

(Order of the Court was made by N.SATHISH KUMAR.J.,)

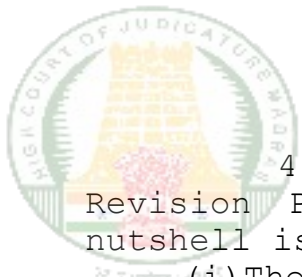
As per the Orders of the Honourable My Lord Chief Justice, dated 30.07.2018, these Civil Revision Petition (MD).Nos.904 and 905 of 2018 and Tr.C.M.P.(MD).No.52 of 2017 are placed before this Bench.

2.CRP(MD).No.904 of 2018 has been filed as against the order passed by the Execution Court in E.A.No.45 of 2006 in E.P.No.77 of 2006 in O.S.No.123 of 1970 on the file of the I Additional Sub-Court, Madurai.

CRP(MD).No.905 of 2018 has been filed as against the order passed in application No.143 of 2016 in E.P.No.440 of 1990 in O.S.No.123 of 1970 on the file of the I Additional Sub-Court, Madurai.

Similarly the respondent/Decree holder filed an application to transfer the Execution Petition in E.P.No.77 of 2006 in O.S.No.123 of 1970 from the file of the I Additional Sub-Court, Madurai to some other Court.

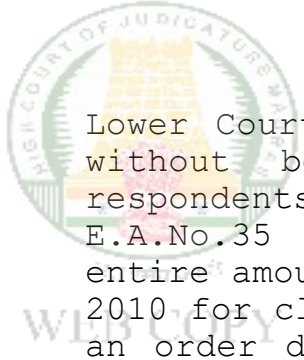
3.Both the Execution Petitions have arisen out of the decree and judgment passed in O.S.No.123 of 1970. Since the impugned orders in both the revision petitions are result of the applications filed by the revision petitioners in both the execution petitions, we are inclined to dispose of both the civil revision petitions and Transfer Civil miscellaneous petition by way of this common order.



4. The factual background leading to filing of these Civil Revision Petitions and Transfer Civil miscellaneous petition in nutshell is as follows:

(i) The first respondent Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai instituted a suit in O.S.No.123 of 1970 for recovery of temple properties against several defendants. The revision petitioner is also arrayed as 15th defendant as a legal heir of the deceased first defendant in the suit. The suit was decreed in favour of the temple on 23.12.1978. Assailing the decree, the sixth defendant one E.M.G.Soundarajan filed an appeal in A.S.No.209 of 1979. Similarly, the defendants 3, 4, 8 to 12, 24 and 25 filed another appeal in A.S.No.9/1980 before this Court. Both the appeals were dismissed by this Court by judgment and decree dated 12.02.1986. Thereafter, a review application was taken up by the 6th defendant. In the review application, a compromise was entered between the 6th defendant and the decree holder. Based on the memo of compromise recorded before this Court, the 6th defendant agreed to pay Rs.33,00,000/- to the decree holder and agreed to pay in installments with specific dates. It is also agreed that in the event of default to pay the installments as agreed for more than a year, the property must be surrendered to the decree holder. It is to be noted that the compromise was only in respect of specific property namely cinema theatre viz., Meenakshi Talkies. As the 6th defendant defaulted in payment of installments, the Temple filed Execution Petition in E.P.No.111 of 1994 for recovery of possession. However, the above execution petition was dismissed due to stay granted by this Court in CMP.No.5991 of 1994 in AAO No.435 of 1994. However, the said AAO was dismissed on 06.11.1995. Thereafter, the petitioner again filed an execution petition for recovery of possession, which was numbered in E.P.No.77 of 2006. It is curious to note that this execution petition No.77 of 2006 filed in view of the default committed by one of the defendants. In the mean while, the temple has already levied the execution in respect of other immovable properties in E.P.No.440 of 1990. In the above E.P, the present revision petitioner was the second respondent. Similarly, it is also to be noted that in execution petition No.77/06, this revision petitioner was not made as a respondent. As the temple filed second execution petition in E.P.No.77/2006, it was objected as time-barred by the respondents. However, the execution Court rejected their contentions. As against which, C.R.P.Nos.1982 and 1983 of 2009 were filed before this Court. This court, by an order dated 01.12.2009 disposed both the CRPs with a direction to execution Court to dispose E.P.No.77 of 2006.

(ii) It is also relevant to note that the respondents 2 and 3 filed an application in E.A.No.113/1999 to deposit a sum of Rs.31,00,000/- being the balance amount as per the compromise entered in the review application. The Execution Court allowed the said application. As a result, a sum of Rs.31,00,000/- was deposited on 25.11.2001. In the mean while, C.R.P.(MD).Nos.1982 and 1983 of 2009 were disposed by this Court with a direction to the



Lower Court to dispose the Execution Petition No.77/2006 on merits without being influenced by the deposit. Thereafter, the respondents 3 and 4, in the execution petition No.77/06 filed E.A.No.35 of 2010 to record their satisfaction, as they paid the entire amount. They also filed review Application Nos.48 and 49 of 2010 for clarification of the order dated 01.12.2009. This Court by an order dated 26.04.2010 disposed the review applications holding that there is no necessity for any clarification, as the earlier order directed the Lower Court to decide the E.P on merits. Thereafter, the learned Execution Court allowed the E.A.No.554 of 2009 and E.A.No.35 of 2010 and recorded full satisfaction in view of the deposit made by the respondents 2 and 3 and dismissed the E.P.No.77 of 2006. As against which, the decree holder filed three C.R.Ps i.e CRP.Nos.987, 988 and 989 of 2010.

(iii) This Court by its common order dated 04.12.2014, set aside the orders of the Execution Court and held that merely because belated deposit of Rs.31,00,000/- made by the judgment debtors contrary to the compromise decree, full satisfaction recorded by the Execution Court is not valid in law and directed the Execution Court to appoint a Commissioner to assess the value of the superstructure and file a report within three months from the date of appointment. On such report, the decree holder was directed to deposit the said amount to the credit of E.P.No.77 of 2006 and directed the Execution Court to pass a consequential order for delivery of possession of the property. It is also relevant to note that the present revision petitioner has filed an application for impleading himself as one of the parties in the civil revision petitions (MD).Nos.987 to 989 of 2010 in M.P.(MD).Nos.1, 1 and 1 of 2014 and contended that without impleading the property bearing door No.193, the decree holder tried to take possession of the same. This court taking note of the fact that door No.193 was subject matter of the separate E.P.No.440 of 1990, has dismissed all the impleading petitions, as he is not a necessary and proper party in those civil revision petitions. Those revision petitions were disposed as early as on 04.12.1994.

(iv) It is also relevant to note that the order passed by this Court in C.R.P.Nos.987 to 989 of 2010 reached finality. A Special Leave Petition filed against that order was also dismissed. Therefore, the order of this court dated 04.12.2014 is binding on the parties. Even after the direction by this Court to pass a consequential order in execution petition, after assessment of the property by the experts, to find out the value of the structures, the Execution Court could not proceed to complete the entire process within 6 months from the date of order of this Court, which necessitated the decree holder to approach once again this Court by way of Transfer Application.

v) This Court was inclined to dispose the E.P by itself, at the relevant time, when the respondents submitted that they were aggrieved by the valuation made by the Advocate Commissioner in respect of the property. Taking note of the above submission, this



Court appointed the Director, National Institute of Technology, Trichy (formerly Regional Engineering College, Trichy) to inspect the property. The expert valued the property and submitted a report. However, the value was less than what the Advocate Commissioner fixed. It was once again objected on the ground that the expert has not valued the fixtures in the property. On such objections, this Court once again directed the expert to value the fixtures and accordingly, he has valued the same and filed a report before this Court. As per the valuation, the decree holder has deposited more than a sum of Rs.2, 26,00,000/- to the credit of E.P. This fact is not disputed.

vi) In the above background scenario, the revision petitioner, who sought to be impleaded in C.R.P.(MD).Nos.987 to 989 of 2010, as against the order passed in Execution Petition No.77/06, once again filed E.A.No.45 of 2016 in E.P.No.77 of 2006 under Section 47 of the Civil Procedure Code on the ground that in the execution petition, the decree holder has not impleaded all the defendants, against whom the decree has been passed. Therefore, the decree holder cannot seek recovery of possession in respect of the properties without impleading all the defendants in the suit. The decree is joint and indivisible one. The E.P is inexecutable for non-impleadment of other defendants in the suit. The further ground was that the boundaries of the properties are not set out in execution petition. All the suit properties are not in possession of legal heirs of the defendants. Further contention of the revision petitioner was that door Nos.16, 17, 18 and 193 are in petitioner's possession. Therefore, the E.P cannot be executable, in respect of other suit door numbers. Similarly, he has also challenged the execution petition on the ground of limitation.

vii) The learned Execution Court declined to entertain such a petition and dismissed the application holding that the contention raised by the revision petitioner is not maintainable. Challenging the same, he has filed the present revision petition No.904 of 2018. Similarly, he has filed an application to set aside the exparte order passed against him in E.P.No.440 of 1990 on the ground that no notice was served in the above execution petition. During the pendency of his application filed in E.A.No.45/2016 in E.P.No.77 of 2006, when he came to appear in the above proceedings on 29.08.2016, while he was standing outside the Court, he was set exparte in execution petition E.P.No.440 of 1990. Therefore, he took up an application for setting aside the exparte order passed against him on 29.08.2016. The execution court, negatived his contention taking note of his conduct in impleading petition in connected execution petitions, held that this application lacks bonafides and he has not come to the Court with clean hands and dismissed this application filed for setting the exparte order. As against, he has preferred another civil revision petition in CRP.(MD).No.905 of 2008.



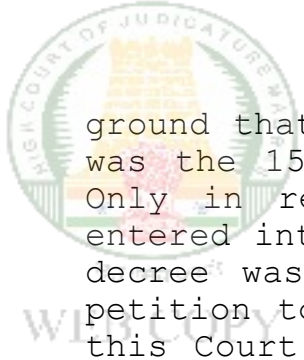
Single Judge of this Court (Justice NKKJ) has in fact passed orders by appointing an expert to value the fixtures and learned Single Judge himself was about to dispose of the Execution petition itself. At that stage, the revision petitioner filed these revision petitions before some other Single Bench and obtained stay of the proceedings. Taking note of the entire facts and how the revision petitioner was successful in dragging the matter, the Honourable My Lord Chief Justice, has posted this matter specifically before this Bench (this Court) and only in the above circumstances, the Civil Revision Petitions and Transfer Civil Miscellaneous Petition are placed before us.

6.The learned Senior counsel Mr.Subbaiah appearing for Ms.J.Anandavalli, learned counsel appearing for the revision petitioners would contend that the decree passed against the defendants is indivisible, whereas the temple/decreed holder has filed the execution petition in E.P.No.77/2006, without impleading the revision petitioner, the decreed holder tried to take possession of the property which is in possession of the revision petitioner. The revision petitioner is in possession of door No.193. Hence, the execution petition filed in E.P.No.77/2006 is not maintainable without impleading all the judgment debtors. The boundaries also are not properly set out. Hence, it is the contention of the learned senior counsel that once the decree is inseparable, there cannot be two different execution petitions. He submitted that decree is not executable one.

7.The further contention of the learned Senior counsel in respect of CRP.(MD).No.905 of 2018 is that the revision petitioner is not served with any notice. While he was set exparte on the ground of alleged substituted service, substituted service cannot be deemed to be a proper service. If proper opportunity is given to the revision petitioner, he would resist the delivery by placing proper materials. Hence, it is the contention of the learned Senior counsel that the exparte order passed against him as early as on 29.08.2016 is liable to be set aside and he should be given an opportunity to contest the execution petition. In support of his contention, he also relied upon the following decisions:

- i)Neerja Realtors Private Limited Vs Janglu (dead) through L.R, reported in 2018 (1) CTC 662 and
- ii)Sangram Singh Vs. Election Tribunal Kotah and another reported in AIR 1955 SC 425,

8.The learned Senior Counsel appearing for the decreed holder Mr.AR.L.Sundaresan, would vehemently contend that the decree is of the year 1970. Despite the matter reached finality in the year 2014 itself by orders of this Court in CRP.(MD).Nos.987 to 989 of 2010, the temple could not take possession of the property. Several applications were filed one by one before the Execution Court and successfully stalled the execution in all these years and the revision petitioner has no right to attack the decree on the

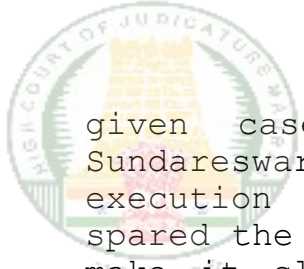


ground that this is indivisible. In fact, the revision petitioner was the 15th defendant in the suit. He has not filed any appeal. Only in respect of the theatre complex, there was a compromise entered into between the 6th defendant and others. As the compromise decree was also not complied, the temple has filed an execution petition to take possession of the property, which was approved by this Court in earlier occasion. The revision petitioner being the judgment debtor and was watching the proceedings from the date of decree, has adopted various methods all these days to resist the delivery for possession of property.

9.It is the contention of the learned Senior Counsel appearing for the respondent/decreed holder that the temple has deposited huge amount in respect of the value of the fixtures related to the property covered under E.P.No.77 of 2006. This Court has passed order as early as on 04.12.2014, directing the Execution Court only to pass a consequential order of delivery. The revision petitioner having made an attempt to implead himself in the above revisions and having failed in his attempt to implead himself, has adopted a novel method, under the guise of Section 47 C.P.C application to nullify the decree itself, which is not permissible at all in law. Admittedly, the property covered under execution petition in E.P.No.77/2006 is not in possession of the revision petitioner. Hence, his contention that the decree is inexecutable cannot be countenanced.

10.The further contention of the learned Senior Counsel appearing for the respondent/decreed holder with regard to the civil revision Petition No.905/18 is that the allegation of the revision petitioner that he was set exparte only on 29.08.2016 is nothing but false allegation. The execution petition E.P.No.440/1990 has been filed in the year 1990 itself. He was set exparte in the year 1992 itself. All other respondents are his kith and kin brothers. He was aware of the above fact, since the filing of connected E.P was also known to him and he made an attempt to implead himself in that E.P and that was also negatived by this Court on 04.12.2014. Therefore, his contention that only on 29.08.2016, he was set exparte when he came to the Court to attend another proceedings in E.P.No.77/2006 is nothing but falsehood. He has filed these civil revision petitions after watching the proceedings all along and only in order to delay the execution, these types of petitions have been filed. Hence, he submitted that both the revision petitions lacks any merits and liable to be dismissed with costs and temple may be put in possession straight away.

11.We perused the entire materials. This is the classic example for the saying that "real litigation starts only after the judgment and decree" not only the decree-holder, but also his legal heirs or some time grandchildren have to undergo ordeal to see the fruits of the decree. Fortunately, such a situation has not arisen for the decree-holder in this case to pursue the execution through his legal heirs or grandchildren, since the decree-holder in the



given case is none other than the God and Goddess viz., Sundareswarar and Meenakshi of Madurai. The delay and resistance in execution of the decree obtained in the year 1970 have not even spared the divine power. The factual information stated above would make it clear that the suit has been laid in the year 1970 for recovery of properties belong to the Meenakshi Sundareswarar temple Devasthanam, Madurai. The decree and judgment came to be passed in its favour on 23.12.1978 in respect of various door numbers. It is not in dispute that the revision petitioner was also arrayed as one of the defendants in the suit. The revision petitioner was impleaded as 15th defendant as a legal heir of the 1st defendant. Challenge was made to the above judgment and decree by the 6th defendant and some other defendants not certainly by revision petitioner. The decree and judgment confirmed by this Court. It is also relevant to note that the decree has been passed in respect of door Nos.16 to 20, 20A and 193.

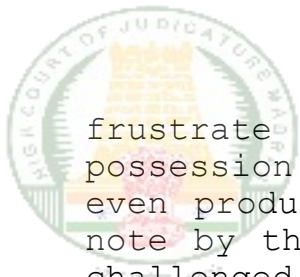
12.Now, it is the case of the revision petitioner that without impleading all the judgment debtors, decree cannot be executed. Such contention in our view has no legs to stand for the simple reason that the execution can be levied against anybody against whom, decree is passed. The temple has rightly filed two execution petitions namely E.P.Nos.77/2006 and 440/1990. The property said to be in possession of the revision petitioner is the subject matter of E.P.No.440/1990. In respect of other properties, execution petition is filed in E.P.No.77/2006. The decree is in respect of the several door numbers. Therefore, we are of the view that they are separable in nature. They can be executed against any person, who is in possession of the property against whom the decree is also passed. It is the prerogative right of the decree-holder to levy the execution of any property covered under the decree. It is not for the judgment-debtor to dictate terms to the decree-holder that for all the properties, execution to be applied simultaneously. Therefore, the contention of the judgment-debtor has no legs to stand. It is to be noted that the other defendants, who suffered a decree have not raised any objection. The revision petitioner against whom, no relief is sought in execution petition No.77/2006 cannot have a right to espouse the grievance of others. The revision petitioner's attempt to step into the shoes of the other respondents, who remained all along mute spectator clearly indicate that the revision petitioner is more interested in stalling the execution.

13.It is further to be noted that the revision petitioner has filed an application under Section 47 of the Civil Procedure Code to delay the execution indirectly what he could not do directly. Despite his attempts to implead himself in the civil revision petition filed in earlier occasions failed and orders also reached finality and a Special Leave Petition also dismissed in the Supreme Court, the judgment-debtor has invented a novel theory to adjudicate a question under Section 47 of the Civil Procedure Code under the pretext that decree is inexecutable. Once his right to



come on record as a party in execution proceedings itself is negated, we are of the view that the application filed under Section 47 of the Civil Procedure Code has no legs to stand. At any event, his contention that all the judgment-debtors were not impleaded cannot be a ground to non-suit the valid decree. The conditions necessary for an application under Section 47 of the Civil Procedure Code are that a question must relate to the execution, discharge or satisfaction of the decree, that question must arise between the parties to the suit in which the decree was passed, or their representatives. Therefore, merely because the property which is said to be in possession of the revision petitioner was not sought to be executed in E.P.No.77/2006, it cannot be said that the decree itself is inexecutable. As the properties are distinct and identifiable, the entire decree cannot be said as inexecutable.

14.It is the right of the decree-holder to apply the execution in respect of any property held by any of the judgment-debtor. There is no bar under the law to file any number of execution petitions to execute the decree for recovery of the distinct properties, which are covered under the decree. There is no bar under law to file a separate and successive applications for claiming recovery of properties, of course, within the period of limitation. Even the execution at the same time against the persons and property of the judgment debtor is not specifically barred under the Code, but only the courts in its discretion, may refuse execution at the same time, against the persons and property of the judgment-debtor. The notice to show-cause against execution shall be issued to the persons against whom execution is applied for requiring him to show-cause on the date to be fixed. The provision under Order 21 Rule 22 of C.P.C makes it clear that only the person against whom, execution sought, can be made as a party in the execution proceedings. Therefore, we are of the view that the revision petitioner though not been impleaded in Execution Petition No.77/2006, the same cannot be a ground to hold that the decree itself is ineffective and inexecutable. We are of the view that such application prima facie shows that it is made only to stall the proceedings nothing but frivolous. Admittedly, the property which was in possession of the revision petitioner is door No.193. In respect of which, separate execution petition is already pending. The above property is covered in the above execution proceedings. Therefore, we are of the view that application filed under Section 47 of C.P.C has to be held to be not maintainable. The Execution court by its well-considered order dismissed the application. We do not find any illegality in the order passed by the Execution court. The Executing Court has clearly held that this application has been filed only to delay the proceedings. When the application filed by judgment debtor indicate the diabolical plan of the judgment-debtor one by one to deny the decree holder the fruits of the decree, such applications should be thrown at the threshold. Every application under Section 47 of the Code cannot be put into trial, if they are frivolous, vexatious and only intended to delay the execution and

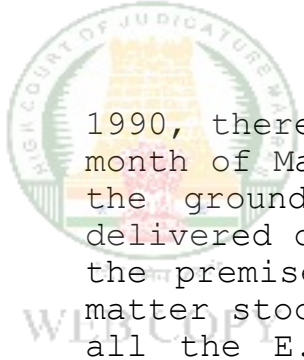


frustrate the procedure of law. Having pleaded that he was in possession of other door numbers of the suit property, he could not even produce a scrap of paper in that regard. This is also taken note by the Execution court. Being the judgment-debtor, he has not challenged the judgment and decree, which reached finality and subsequent attempts made by him to implead in the earlier revision petitions also failed. The above orders have also reached finality, the orders of this Court directing the Execution Court to pass consequential order has also reached finality, even after filing the application under Section 47 of C.P.C is nothing but abuse of process of law. We, hold so, by taking note of his conduct, who tried to achieve what he could not achieve directly. Hence, Civil Revision Petition No.904 of 2018 stands dismissed.

15.Asfar as CRP.(MD).No.905 of 2018 is concerned, it is the main contention of the revision petitioner that in the above execution petition, he was not served and set exparte only on 29.08.2016 by way of substituted service. Only when he came to the Court to attend the other proceedings in E.P.No.77/2006, he came to know that he was set exparte. At the threshold, we reject the very contention of the revision petitioner in this regard.

16.We have perused the entire notes paper pertaining to E.P.No.440 of 1990. The execution petition in E.P.No.440 of 1990 filed against 10 respondents. The revision petitioner was arrayed as 2nd respondent in the above E.P and the said E.P was pending from the year 1990. As early as on 12.03.1991, the respondents 1, 4, 5, 6, 8, 9 and 10 were served and asfar as revision petitioner is concerned, notice was unserved. For various reasons, it is curious to note that R.1 and other respondents are brothers and sisters or the legal heirs or close relatives. Since notice could not be served for various reasons, publication was effected as against the revision petitioner and the revision petitioner was set exparte on 07.07.1992 itself. Further, the notes paper also clearly indicate that there was several interlocutory applications filed to delay the execution petitions. Therefore, the contention of the revision petitioner that he was set exparte only on 29.08.2016 and he is not aware of the execution petitions is nothing but falsehood and misrepresentation of facts made deliberately.

17.It is also curious to note that one Vallaiyammal and others filed an application under Order 21 Rule 97 of CP.C in E.A.No.265 of 2007 in E.P.No.440/1990 and that application was pending from the year 2007. In the above application, this revision petitioner was made as one of the respondents. After hearing all the applications, the above EA was dismissed on 28.07.2016 itself. It is also to be noted that in EP.No.440/1990, a delivery was already ordered in the year 1994. The endorsement made in notes paper makes it clear that despite the order of delivery of the year



1990, there was a resistance and ground portion was delivered in the month of March 1994 itself. Notes paper also clearly indicates that the ground floor was also delivered and upstairs could not be delivered due to want of police protection as well as the locking of the premises and E.A.Nos.226/ 1994 and 227/1994 are pending. The matter stood adjourned to 22.04.1994. Therefore, after disposing of all the E.As, once again delivery was ordered. Thereafter, the matter has been prolonged by way of various applications. Till now, the delivery could not be effected. The above notes paper clearly establish the fact from 1991 onwards, there were as many attempts by the decree-holder to take the possession lawfully. But the same were thwarted. That being the position, the revision petitioner, who is said to be in possession of door No.193, his contention that he is not aware of the proceedings is nothing but utter falsehood. That apart, he was also made as one of the respondents in E.A. As discussed above, which was also dismissed, after proper enquiry. Apart from that, he also filed an application to implead himself in the civil revision petitions referred above, (C.R.P.(MD).Nos.987 to 989 of 2010) wherein also a specific reference has been made with regard to pendency of execution Petition No.440/1990 against the revision petitioner.

18.As discussed above, Civil Revision Petitions were disposed of as early as on 04.12.2014. The above Civil Revision Petitions also reached finality. Having known that execution petitions are already pending, his contention that he came to know about the execution petition only in the year 2016 is highly unbelievable, such allegations has been made only to file the frivolous petition claiming lack of knowledge of the execution proceedings. When the records show that the revision petitioner has knowledge of the execution proceedings from the very beginning and he was set exparte in the year 1992, his contention that he was set exparte only in the year 2016, is nothing but a story invented by him. Of course, he was set exparte on the basis of substituted service in the year 1992. Merely because he was set exparte in the year 1992 on the basis of substituted service in the year 1992, we cannot conclude that he had no knowledge of the execution petition at all. No doubt, a judgment cited by the revision petitioner reported in 2018 (1) CTC 662 (Neerja Realtors Private Limited Vs Janglu (dead) through Legal Representative) and AIR 1955 SC 425, (Sangram Singh Vs. Election Tribunal Kotah and another), the Honourable Apex Court has reiterated that the substituted service effected without following Rule 20 of Order 5 of CPC, is exception to the normal mode of service and the mere publication cannot be deemed to be proper service in law. Absolutely, there is no dispute in the proposition laid down by the Honourable Supreme Court.

19.On factual finding, we have found that as narrated, the revision petitioner had knowledge about not only this execution petition but also connected execution petitions. He was set exparte



as early as in the year 1992. From one way or other, several applications have been filed to stall the execution. Therefore, the submission that he was set exparte only in the year 2016 and still such time, he has no knowledge about the execution petitions lacks bonafide and he has come to the court by suppressing the material facts and that too with unclean hands. Filing such application with distortion of facts only in order to circumvent the legal procedure, such applicant has no right to be heard at all. But considering the entire factual matrix, surrounded with this case from the year 1970 till now, we found that all the applications filed in every stage by judgment debtor himself and third parties by using procedures under the CPC are nothing but only to stall the execution proceedings. It is to be noted that while disposing of CRP.Nos.982 to 989 of 2010, this Court fixed a specific time limit to dispose of E.P and also directed the Execution Court to pass only a consequential order i.e delivery only. Even after such a positive directions of this Court, the decree holder could not take delivery of possession. Many directions have been issued by this Court in various proceedings to execution Court to complete the execution proceedings.

i) In CRP.(MD).No.983 of 2008, dated 10.09.2008, this Court, while disposing the CRP, has given a direction as follows:

"....this civil revision petition is disposed of directing the First Additional Sub-Court, Madurai, take up E.P.No.77 of 2006, provide opportunities to all the parties, also implead one more legal representative left out by name E.M.G.S.Muthu Meenakshi and proceed in accordance with law and take an earnest attempt to dispose it of within a period of six months from the date of receipt of a copy of this order. It is not open to the parties to take up Transfer original Petition for transfer of civil suits."

ii) In C.R.P.(MD).No.1010 of 2015, dated 08.06.2015, this Court has given a direction as follows:

"The Advocate Commissioner is directed to complete the process of valuation as expeditiously as possible and in any case, on or before 06 July, 2015. The learned Executing Judge is directed to put the first respondent in vacant possession of the property immediately after filing the report by the Advocate Commissioner and dispose of the Execution Petition in E.P.No.77 of 2006, as expeditiously as possible and in any case, on or before 24 July, 2015."

iii) In Review Application (MD).No.95 of 2015 in CRP(MD).No.1018 of 2015, dated 21.07.2015, this Court has given a direction as follows:

"There shall be a further direction to the learned Executing Judge to dispose of the Execution petition as early as possible and in any case, on or before 30 September, 2015."



iv) In CRP(MD).No.643 of 2016, dated 05.04.2016, this Court has given a direction as follows:

"....this Court directs the Additional Subordinate Judge, Madurai, to dispose of E.P.No.77 of 2006, pending on the file of learned I Additional Subordinate Judge, Madurai as expeditiously as possible in any event not later than 30th June 2016 and file compliance report before this Court."

Despite such directions, the Execution Court in fact struggled to proceed due to various applications filed by the judgment-debtor as well as third parties, at the instance of the judgment debtors.

20. It is suffice to state that the judgment debtors took out various applications and the same clearly indicate that their only intention is to delay the execution. In view of the same and also considering the fact that the decree-holder is Meenakshi Sundareswarar Devasthanam, the Court is duty bound to protect and safeguard the properties of a Religious and Charitable Institution. This has been reiterated by the Honourable Apex Court in A.A.Gopala Krishnan Vs Cochin Devaswom Board and Others reported in (2007) 7 SCC 482. In paragraph No.10 of the said decision, the Honourable Apex Court has held as follows:

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/ archakas/ shebaita/ employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of Courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

21. Though the execution petition is only pending for passing a consequential order of delivery, when the execution court has been prevented by various applications under the cover of procedure, we are of the view that again directing the Executing court to pass an order, the delivery will not be achieved. Therefore, we are of the view that the Court is having noted the delaying tactics and diabolical plans of the judgment debtor,



defeating the right of the decree holder, this Court can very well invoke the power under Section 115 of CPC as well as Article 227 of Constitution of India to prevent the abuse of process of law and for securing the ends of justice.

22.If the entire proceedings are again allowed to crop out in some applications to adjudicate right in execution petitions, it will certainly cause grave injustice to the decree holder. The High Court under Article 227 of the Constitution of India enjoys not merely the power of superintendence but also the judicial control over the inferior courts. In this execution petition, the petition is mere pending for ordering the delivery. It has been successfully thwarted. Considering the nature of lis involved in the execution petition, this Court itself by invoking the power under Article 227 of Constitution of India can very well order delivery. Therefore, we are of the view that by invoking the power under Section 115 of CPC as well as Article 227 of Constitution of India and also revisional power, we ourselves can direct the delivery of property to the decree-holder.

23.Further, this Court also has the power to transfer any of the suits or proceedings pending from Subordinate Court to this Court under Section 24 of C.P.C. The High Court also in appropriate cases by invoking the Section 24 of CPC can withdraw any cases from any of the Court subordinate to it. Such power can be exercised on the application or by the own motion. Except present civil revision petitions, execution petitions are now pending for delivery. To prevent further frivolous applications and also to prevent further delay, in delivery of possession, we are of the view that it is a fit case, where this Court itself can order for delivery.

24.Accordingly, we direct the judgment-debtors in both the execution petitions to quit and deliver the possession to the decree-holder, within one month from this day, failing which, the Executing Court shall effect delivery on or before 15.11.2018. The decree holder shall pay the necessary charges before the Execution court within seven days from the date of receipt of a copy of this order. The Commissioner of Police, Madurai is hereby directed to provide necessary police protection for effecting delivery by the court officials.

25.With the above direction, the civil revision petitions are dismissed and Transfer civil miscellaneous petition is also disposed of. Connected Miscellaneous petitions are closed. For compliance, post the matter on 19.11.2018.

26.It is also made clear that the decree holder has deposited more than Rs.2 crores before the Execution court to the credit of E.P. Those amounts shall be disbursed after disposal of



any application filed for mesne profits by the decree holder. Till such time, the amount shall be kept in any of the Nationalised Banks in any interest bearing deposit.

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Sd/-

Assistant Registrar(Records)

Sub Assistant Registrar(CS-I)

To

1.The First Additional Sub Court,
Madurai.

2.The District Collector,
Madurai District,
Madurai.

3.The Commissioner of Police,
Madurai.

+1CC to Mr.G.GOVINDARAJAN, Advocate, SR.No. 85360

+3CC to Mr.J.ANANDHAVALLI, Advocate, SR.No. 85225, 85221,85223,

+1CC to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.85267

C.R.P.(MD).Nos.904 and 905 of 2018
and

Tr.C.M.P.(MD).No.52 of 2017
19.09.2018

VS

ES/RP/SAR 1/24.09.2018/16P/9C