



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.04.2018

Pronounced on : 27.06.2018

CORAM

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

C.R.P. (MD) (NPD) No.752 of 2015

1.Selvi
2.Usha Rani
3.Josemin Sudha
4.Vellappan
5.Saroja
6.Florence
7.Lilly Bai

.. Petitioners

vs

1.Sudha Devi
2.Vinod
3.Vidhya

Kochappi Nadar

(D1) (Died) D2 and D3 are recorded as
his L.R.s as per order in I.A.No.20/1995
of Sub Court, Kuzhithurai.

Chellakkon Nadar

(D2) (Died) L.R.s are impleaded as
apellants 3 to 11 in S.A.No.602 of 1995
(D17 to 25) as per order in CMP.Nos.12694 to 11693/2003
of Madurai High Court.

Kumarakkannu Nadar

(D3) (Died) L.R.s are D26 to 31 are
impleaded as per order in I.A.No.43 of 2010
dated 16.12.2010)

Dasan

(D4) (Died) L.R.s are impleaded as
respondents 9 to 15 in A.S.No.198/1983
as per order in I.A.No.952 of 1983.

Dasayyan

<https://hcservices.ecourts.gov.in/hcservices/>

(D5) (Died) L.R.s are respondents 9 to 15
in A.S.No.198/1983



4. Johnson

5. Sundaram

Kalyani Pillai
(D8) (Died) D9 is recorded as her
L.R.s as per order in I.A.No.425/2010
dated 16.12.2010

6. Vijamma

Thai
(R10) (Died) L.R.s are D11, 12, 13, 14 15 & 16
are recorded.

7. Alphonse

Daisy
(D12) (Died) L.R.s are D10, 12, 13, 14 & 15
are recorded.

8. Mercy Bai

9. Philominal

10. Pushpam

11. Chinthamony

12. Sighamony

13. Rajamony

14. Saraswathy

15. Kanakamony

16. Poomoni

17. Jebamony

18. Paulmoni

19. Santharani

20. Lizal

21. Sudar Sobi

22. Edvid

<https://hcservices.ecourts.gov.in/hcservices/>

23. Wilfred



24.Ethal Flory

25.Robert

26.Jemily alias Seetha

27.Raja Kumar

28.Rajan

29.Sujin

.. Respondents

Prayer: Civil Revision is filed under Section 115 of Civil Procedure Code, against the order and decreetal order dated 28.10.2014 in E.P.No.26 of 2013 in O.S.No.584 of 1977, on the file of the Court of Principal District Munsif, Kuzhithurai.

For Petitioners : Mr.P.Subramanian

for Mr.D.Anbarasu

For Respondents : M/s.J.Anandhavalli (for R1 to R3)

Mr.V.Sasikumar (for R15)

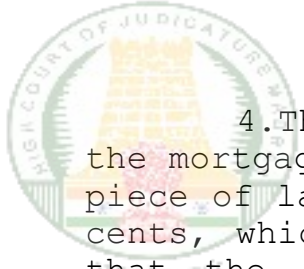
No Appearance (for R4 to R14, R16 to R29)

ORDER

The instant Civil Revision Petition is preferred by the petitioners, who are the Respondent Nos.14, 34, 36, 37, 38, 40 and 41 in the Execution Petition, as against the order passed in E.P.No.26 of 2013 in O.S.No.584 of 1977 on the file of the learned Principal District Munsif, Kuzhithurai, Kanyakumari District.

2.The said Execution petition was filed by the petitioners therein for the execution of the final decree passed in the aforesaid original suit dated 28.02.2013. Further, the said final decree was passed in pursuance of the preliminary decree passed in a suit for redemption of mortgage dated 09.02.1982. Apart from that the prayer made in the execution petition is for the delivery of the mortgaged property on redemption of the mortgage by demolishing the buildings therein.

3.The case of the Revision petitioners is that they have already purchased the lands from one Jenmie Tarawad and all of them have constructed houses and residing therein. Moreover, all their respective properties are having specific boundaries also. Apart from that these petitioners are not party in the suit, but had been impleaded in the Final Decree proceedings, hence no order can be passed in the execution proceedings as against them, but without considering these aspects, the learned judge has mechanically allowed the execution petition.

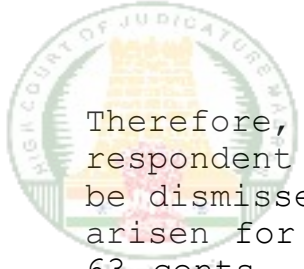


4. The learned Counsel for the petitioner would submit that the mortgaged property is extent of one acre and twenty six cents is piece of larger extent of a property to an extent of 5 acres and 42 cents, which does not have any definite boundary. He adds further, that the decree cannot be executed for the simple reason that without identification of the property as per law by appointing Advocate Commissioner. Apart from that the prayer of demolition of their residential houses is unknown to law when the suit was filed only for redemption of mortgage. Once it is admitted by the Respondents/ Execution petitioners that buildings are constructed then a suit for mandatory injunction is to be filed, otherwise, no such prayer can be sought for. Hence, according to the learned counsel for the revision petitioners that the order passed in the execution petition is to be dismissed.

5. The Revision petitioners have filed two Additional typed set of papers in order to substantiate the property sought for delivery by the respondents/petitioners in the execution petition, who are plaintiffs No. 3 to 5 impleaded as per the order passed in I.A.No.42 of 2012 dated 16.12.2010 as legal representatives of 2nd plaintiff, consisted of buildings belong to 1st, 2nd and 4th to 7th petitioners along with the related documents. Apart from that the Judgment and decree passed in O.S.No.584 of 1977 and the judgment and decree passed in A.S.No.198 of 1983 by the Subordinate Judge of Kuzhithurai, were also filed and perused. Further, the filing of the 2nd Appeal in S.A.No.602 of 1995 was also brought to the notice of this Court by the learned counsel for the Revision Petitioners.

6. Per contra, the learned Counsel for the respondent Nos. 1 to 3 by referring the counter affidavit filed by the 2nd respondent namely N.K.Vinodh, would contend that the grandmother of the respondent Nos.1 to 3 namely Ammakutiammal filed an original Suit in O.S.No.584 of 1977 sought for the relief of redemption of the mortgaged property an extent of 1 Acre 26 cents. Subsequently, preliminary decree was passed in the said suit on 09.12.1982 and final decree was passed on 28.02.2013. It is further submitted that in pursuance of the death of the Ammakutiammal, her legal heir that is the father of the 1st to 3rd respondents was impleaded as 2nd plaintiff and thereafter on account of the death of the father of the 1st to 3rd respondents they have been impleaded. Further, the final decree was passed for the redemption of the mortgaged property by excluding an extent of 63 cents as the said piece of property was sold by their father to respondent Nos.17, 23, and 24.

7. It is vehemently contended by the learned counsel for the respondents 1 to 3 that the purchase of the piece of properties by the petitioners were brought to the notice of the learned trial Court in the final decree proceedings. But they did not substantiate their purchase by way of any documentary evidence, accordingly, their contention was rejected in the final decree proceedings. Though all of them are having knowledge about the preliminary and final decree proceedings, they have been allowed to attain finality as no challenge was made as against the final decree proceedings.



Therefore, as per the submissions of the learned Counsel for the respondent Nos.1 to 3 that the Civil Revision Petition is liable to be dismissed. The learned Counsel further adds that no necessity was arisen for the identification of the said property by excluding the 63 cents. Since all arrangements were made to take delivery of the property by also obtaining police protection also, the pendency of the instant Revision Petition would make impediment in the execution of the decree. Hence, she sought for the dismissal of the Civil Revision Petition at the earliest.

8. In addition to the submissions of the learned counsel for respondent 1 to 3 the Counsel for the other respondents would also contend that the dismissal of the Civil Revision Petition alone would enable the parties of this case to enjoy the fruits of this case at the earliest.

9. I heard Mr. P. Subramanian for Mr. D. Anbarasu, learned counsel for the petitioners, M/s. J. Anandhavalli, learned counsel for the respondents 1 to 3 and Mr. V. Sasikumar, learned counsel for the 15th respondent and perused the entire materials available on records.

10. The point for consideration in the Civil Revision Petition is that as to whether the revision petitioners are entitled for the relief sought for herein that is the order passed in E.P.No.26 of 2013 in O.S.No.584 of 1977 is liable to be interfered with or not. However, it is to be kept in mind that the pleas raised herein are deserved for consideration as those pleas were not considered by the learned trial Court where the final decree was passed in the aforesaid original suit. Further the execution of decree can be given for the demolition of the buildings constructed there in the E.P. schedule property.

11. The passing of preliminary and final decrees are admitted by the both parties. It is also the admitted case that all the parties concerned are the parties in the final decree proceedings. Though the final decree passed in the original suit was taken up for appeal in A.S.No.198 of 1983 on the file of the learned Subordinate Judge, Kuzhithurai, the same was dismissed. Thereafter, the second appeal in S.A.No.602 of 1995 was filed the same was disposed of, and the revision petitioners have not substantiated that they had obtained positive orders in their favour in the aforesaid Second Appeal.

12. Now, this Court puts its anxious consideration in respect of the order passed in the execution petition. It is the case of the revision petitioners that the execution petition is not maintainable for the reason that the same is filed for the relief of demolition of constructions of the buildings found in the E.P. schedule property when no such prayer was made in the preliminary and final decree proceedings. The Revision Petitioners admittedly are parties in the final decree proceedings. So, they are liable to comply with the terms of the final decree without any deviation. If they feel that they are aggrieved in the terms of the final decree, it is for them to take up the matter for challenge, the raising of such a plea



that is finding fault with the order passed in the execution proceedings cannot be countenanced in the E.P. proceedings.

13. Admittedly the suit is of the year 1977, the person filed the suit had not enjoyed the fruit of the preliminary and final decree. The Court is concerned over the long pendency of the Civil Suits. There may be several reasons for the consumption of long duration for the disposal of suits, but the parties concerned must extend their co-operation for the speedy disposal of the case as all the citizens of this country are duty bound to resolve their disputes by resorting law.

14. The facts of the case is that though the veracity of the order passed in the execution petition is under challenge, the revision petitioners have not challenged or obtained any order by setting-aside the terms of the final decree passed in the original suits up to its finality. So, in the considered opinion of this Court that the points agitated in the counter filed before the execution Court is legally not fit of consideration. Moreover, no legal proceedings is initiated to protect their right over the buildings found in E.P. schedule property in accordance with law. Although they are entitled to claim damages in respect of the buildings constructed over the E.P. schedule property, no such prayer was sought for. However, the identification of the property is already done when the final decree was passed.

15. For the forgoing discussion, this Court is constrained to dismiss the Civil Revision Petition. Accordingly dismissed, there is no order as to costs.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Principal District Munsif,
Kuzhithurai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to M/s.J.Anandhavalli , Advocate, SR.No.70112.

order made in
C.R.P. (MD) (NPD) No.752 of 2015
27.06.2018