



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.07.2018
CORAM

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

C.R.P. (MD) (NPD) No.1875 of 2017
and
CMP (MD) No.9773 of 2017

Keselet

.. Petitioner

Vs

1. Sathananthan
2. Radhamoni

Devadhas (Died)

3. Shaji
4. Stalin
5. Princi
6. Harilal
7. Lenin

.. Respondents

PRAYER: Revision filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal Order dated 07.10.2017 passed in E.A.No.114 of 2012 in E.P.No.149 of 2005 in O.S.No.92 of 2004 on the file of the Principal District Munsif Court, Kuzhithurai and allow the Civil Revision Petition.

For Petitioner : Ms.J.Anandavalli

For Respondents : Mr.K.Sreekumaran Nair
1 and 2

For Respondents : No Appearance
3 to 7

ORDER

The petitioner has filed this revision challenging the fair and decretal order dated 07.10.2017 passed in E.A.No.114 of 2012 in E.P.No.149 of 2005 in O.S.No.92 of 2004 on the file of the learned Principal District Munsif Court, Kuzhithurai.

2. The facts in a nutshell are as under: Respondents 1 and 2 herein filed a suit in O.S.No.92 of 2004 before the District Munsif Court, Kuzhithurai for recovery of possession of a property of an extent of 50 cents of land and trees in Old Survey No.3025/1, Kaliyal Village, Vilavancode Taluk, Kanyakumari District.



3. It is the case of the petitioner that respondents 1 and 2 claimed title over the said property based on a sale deed dated 19.05.1986 executed by one Krishnan Nadar, who, according to the petitioner, entered upon a poromboke land and developed it. Respondents 1 and 2 are stated to have put up a building in the said property.

4. It is stated that the defendants in the suit, namely the kith and kin of Krishnan Nadar, forcibly entered upon the property and caused damage to the trees and qua the said incident an FIR was registered. It is added that, thereafter, in the absence of respondents 1 and 2, the defendants destroyed the house and caused damage to the buildings and are in unauthorised occupation of the property. Hence, the respondents 1 and 2 herein filed the suit for the relief stated supra.

5. The trial Court, by judgment and decree dated 23.02.2005, decreed the suit as prayed for. Assailing the same, an appeal, being A.S.No.91 of 2005, was filed before the Subordinate Court, Kuzhithurai, which was ultimately dismissed.

6. It is the case of the petitioner that suppressing the factum of filing of the first appeal, respondents 1 and 2 preferred E.P.No.149 of 2005 for delivery of the property.

7. Pending Execution Petition, the petitioner filed E.A.No.114 of 2012 under Section 47 of the C.P.C. to reject E.P.No.149 of 2005. Before the Execution Court, on side of the petitioner, two witnesses were examined and Exs.P1 to P14 were marked. On the side of the respondents, the second plaintiff was examined as R.W.1 and Exs.R1 to R4 were marked.

8. Upon consideration of the rival submissions, the Executing Court dismissed the petition filed under Section 47 of the C.P.C. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

9. I heard Ms.J.Anandavalli, learned counsel for the petitioner and Mr.K.Sreekumaran Nair, learned counsel for the respondents 1 and 2 and also perused the materials available on record. There was no representation on behalf of the respondents 3 to 7.

10. The learned counsel for the petitioner submitted that the Executing Court erred in dismissing the application of the petitioner and had also failed to see that the property in question cannot be the subject matter of the decree, as the vendor of the respondents 1 and 2 did not have right to convey the same. He would submit that the Executing Court ought to have seen that Old S.No.862/1 correlates to Old S.Nos.3029 and not Old S.No.3025 and no explanation offered by the respondents 1 and 2 for non-submission of the correlation register. He submitted that the Executing Court erred in not giving any finding on the merits of the petition.



11. Per contra, the learned counsel for the respondents 1 and 2 submitted that having failed before the trial Court as well as the appellate Court, the petitioner has filed the petition under Section 47 of the C.P.C. by raising the same contentions as stated in the suit in O.S.No.231 of 2011 filed by her. It is submitted that pursuant to the decree passed by the trial Court, the respondents 1 and 2 have filed the Execution Petition for delivery of possession of the suit property. When the Court Amin went to the property for effecting delivery of the property, the petitioner and her men prevented the Amin by force from executing the warrant. He would submit that the petitioner was preventing the respondents 1 and 2 from enjoying the fruits of the decree and prayed that the revision petition may be dismissed with exemplary costs. In support of his submissions, the learned counsel cited the decisions in R.Radha v. B.Saraswathy, reported in 2005 92) CTC 272; M.Maniannan v. B.Chandrika, reported in 2014 (4) CTC 836; A.V.Hanifa v. Salima Bhanu, reported in 1991 (2) MLJ 325.

12. It appears that the respondents 1 and 2 have filed suit being O.S.No.92 of 2004 for recovery of possession and for mesne profits, wherein the petitioner herein is one of the defendants viz., second defendant. By the decree and judgment dated 09.12.2009, the trial Court decreed the suit. Aggrieved by the same, the defendants therein filed A.S.No.91 of 2005 before the Sub-Court, Kuzhithurai and the first appellate Court confirmed the decree and judgment passed by the trial Court. Aggrieved by the concurrent findings, the defendants in O.S.No.92 of 2004 have filed the Second Appeal being S.A.No.301 of 2010 before this Court. By the judgment dated 18.10.2010, the High Court dismissed the Second Appeal confirming the judgment passed in O.S.No.92 of 2004 as confirmed by the first appellate Court in A.S.No.91 of 2005.

13. While dismissing the Second Appeal being S.A.No.301 of 2010, the learned Single Judge of this Court observed as under:

"25. The Courts below after analysing all the rival contentions raised on either side have rightly rejected the defence taken on the side of the appellants/defendants and in view of the foregoing elucidation of both the factual and legal aspects, this Court has not found even a flimsy ground to make interference with the well-merited judgments and decrees passed by the Courts below and altogether the present second appeal deserved to be dismissed.

26. In fine, this second appeal deserves dismissal and accordingly is dismissed without costs at the stage of admission. The judgment and decree passed in Original Suit No.92 of 2004 by the First Additional District Munsif Court, Kuzhithurai upheld in Appeal Suit No.91 of 2005 by the Sub-Court, Kuzhithurai are confirmed."



14. Thus, the argument advanced by the petitioner before the Executing Court as well as in this revision had already been decided by the learned Single Judge of this Court in S.A.No.301 of 2010. If really, the petitioner was feeling aggrieved by the judgment in S.A.No.301 of 2010, she ought to have approached the Hon'ble Apex Court and she cannot urge the same arguments by way of claim petition. The approach adopted by the petitioner would clearly establish that only to protract the proceedings, she had filed the claim petition without any right.

15. Moreover, when the contention with regard to the difference in Old Survey Number and the Re-Survey Number was negatived by the trial Court, she cannot once again raise the same contention in the claim petition. Therefore, the contention that Re-Survey Number and Old Survey Number does not tally with each other cannot be accepted.

16. As rightly observed by the Executing Court, if really the petitioner has any objection qua execution of sale deed by Krishnan Nadar, she ought to have raised the same in the original suit itself and not in the claim petition.

17. The petitioner has filed the claim petition mainly on the ground that the property could not be identified. As observed by the Executing Court, in the execution proceedings, question of identify of the property could not be raised. After passing the decree in favour of the respondents 1 and 2, it is for the Court and the respondents 1 and 2 to look out the question of identify of the property. The petitioner, who is a judgment debtor, cannot canvass the legality of the decree in E.P.No.149 of 2005.

18. At this juncture, it is pertinent to refer the decision in A.V.Hanifa v. Salima Bhanu, supra, wherein this Court held as under:

"9. Learned counsel for the petitioner submits that under Section 47(1), Civil Procedure Code all questions arising between the parties to the suit which a decree was passed, or their representatives, and relating to the execution, discharge satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit. Learned counsel wants me to interpret this section as meaning that any question which is raised by a party to the sit should be considered by the execution Court if it relates to execution, discharge or satisfaction of the decree. Such a wide interpretation is unsustainable. When the Section refers to all questions it only means all questions which were not raised in the suit and decided by the trial court. If a question was raised before the trial Court at the state of trial and decided by the trial court it is not open to the parties to raise again at the stage of execution. Similarly, if a question



ought to have been raised by a party before the trial court at the state of trial and if omits to raise it, even then he cannot raise it under Sec.47 before the executing court."

19. In R.Radha v. B.Saraswathy, supra, the respondent had obtained an ex parte decree against the petitioner for specific performance of an agreement of sale and the respondent had filed Execution Petition for execution of the decree and the Executing Court having considered the rival contentions, ordered delivery of the property. After taking delivery of the property by the decree holder, once again the judgment debtor trespassed into the suit property and the decree holder had filed application for delivery of possession for the second time. The Executing Court ordered second time delivery of property. In the meanwhile the judgment debtor filed application under Section 47 read with Section 94(3) and Section 151 of C.P.C. to declare that the ex parte decree passed in the suit is a nullity and therefore non est in law, unforceable and unexecutable and to dismiss the E.P. In the aforesaid facts and circumstances of the case, this Court held as under:

"11.The axiomatic principle of civil jurisprudence is that the legality of the decree cannot be canvassed before the executing Court and therefore, the learned Assistant Judge has rightly rejected such contention put forth on behalf of the revision petitioner herein and held that the decree has become final, as the revision petitioner miserably failed to agitate the same before trial Court to work out her remedies in a manner known to law. Hence, this Court is unable to accept such an argument advanced by the revision petitioner and finds that since the revision petitioner failed to take steps to set aside ex parte decree and allowed the same to become final, such contention has to be heard to be rejected."

20. When in the case of ex parte decree itself, this Court has held that the decree has become final and revision petitioner has no right to question the decree. In the case on hand, admittedly, the suit proceedings initiated by the respondents 1 and 2 were strongly contested by the petitioner, who also carried the proceedings upto the High Court and the High Court, by its elaborate judgment, confirmed the decree and judgment passed in O.S.No.92 of 2004. Therefore, the petitioner has no right to question the execution of the decree in O.S.No.92 of 2004.

21. In M.Maniannan v. B.Chandrika, supra, this Court held as under:

"19. From the above, one can understand that this Court has taken a very strong view about the conduct of the Petitioner that the Petitioner does not deserve any sympathy and the Order of Eviction passed by the Court below should not be interfered with. When this, Court



confirmed the Order of Eviction by dismissing the CRP filed by the Petitioner. There is nothing to be decided by way of Section-47 Petition before the Rent Controller. The procedure adopted by the Petitioner is something unknown in law. The Order passed by this Court has sought to be nullified by way of Section 47-Petition before the learned Rent Controller. If this is accepted, it would amount to destroying the very heirarchy of the institution itself. Every party, who gets adverse order which is confirmed by the highest Court of the State or Country, would casually challenge the same by approaching the lower forum. It is a clear case of misuse and abuse process of law and an attempt to damage the image of the Court and this Court cannot be a spectator to an attempt to interfere with the administration of justice."

22. As stated supra, the petitioner was defeated up to the Second Appeal. If the petitioner is aggrieved over the judgment in the Second Appeal, the proper course is to approach the Hon'ble Apex Court. It is not open to the petitioner to file claim petition under Section 47 of the C.P.C. and indirectly challenge the judgment passed by this Court and that itself is in violation of this Court order. It is a clear case of misuse and abuse of process of law.

23. It is to be noted that the Executing Court has rightly observed that all the contention raised by the petitioner would make the Court to infer that the petitioner had filed Section 47 application only to avoid the respondents 1 and 2 from enjoying the fruits of the decree. The order of the Execution Court is well founded and there is no infirmity warranting interference of this Court.

24. In the case on hand, as stated supra, the petitioner has taken all dilatory tactics to prevent the respondents 1 and 2 from enjoying the fruits of the decree in O.S.No.92 of 2004. There is no illegality in the order of the Executing Court dated 07.10.2017 passed in E.A.No.114 of 2012 and the Civil Revision Petition is liable to be dismissed.

25. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/



To

The Principal District Munsif,
Kuzhithurai.

Copy To:

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

+1CC to Ms.J.Anandavalli, Advocate, SR.No.71639

+1CC to Mr.K.Sreekumaran Nair, Advocate, SR.No.71262

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VSV

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