



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 02.07.2018
DELIVERED ON : 02.08.2018

CORAM

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

C.R.P.(MD) (NPD) No.2433 of 2017 and
CMP(MD)No.11517 of 2017 and
CMP(MD)No.3974 of 2018

Nallamuthu (Died)
Subhananda Raj

.. Petitioner

Vs

M.Mony

.. Respondent

Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decretal Order dated 20.11.2017 passed in E.P.No.45 of 2016 in O.S.No.527 of 2005 on the file of the Principal District Munsif Court, Kuzhithurai.

For Petitioner : Ms.J.Anandavalli

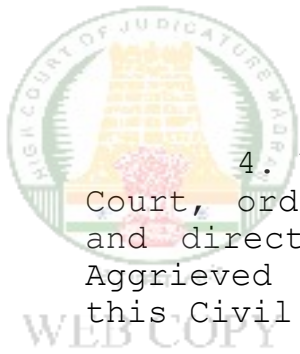
For Respondent : Mr.R.Karthikeyan

ORDER

Being aggrieved by the order of delivery of "B" schedule property passed in E.P.No.45 of 2016 in O.S.No.527 of 2005 on the file of the Principal District Munsif, Kuzhithurai, the petitioner, who is the second defendant in the suit, has filed this Civil Revision Petition.

2. The respondent has filed E.P.No.45 of 2016 seeking to deliver "B" schedule property in favour of him as per the decree dated 28.01.2013 passed in A.S.No.34 of 2011 and confirmed by this Court in S.A.(MD) No.388 of 2013, dated 11.05.2016.

3. E.P.No.45 of 2016 was resisted by the petitioner stating that the property sought to be delivered is not definite, not identified and/or not located by any specific measurements. It is stated that "B" schedule property described in the plaint as a plot of land approximately measuring 8 cents and the plan appended to the judgment passed in S.A.(MD) No.388 of 2013 does not specify the area. It is stated that since there is no plot of 37 cents as shown in the plan, there is no chance to demarcate 8 cents out of 37 cents. According to the petitioner, the plan appended to the Second Appeal does not tally with the re-survey plan or lye of the land and therefore, delivery on the basis of the plan appended to the judgment of the Second Appeal is impossible.



4. Upon consideration of the rival submissions, the Executing Court, ordered delivery of "B" schedule property to the respondent and directed the Execution Petition to be listed on 15.12.2017. Aggrieved by the order of delivery, the petitioner has preferred this Civil Revision Petition.

5. I heard Ms.J.Anandhavalli, learned counsel for the petitioner and Mr.R.Karthikeyan, learned counsel for the respondent and also perused the materials available on record.

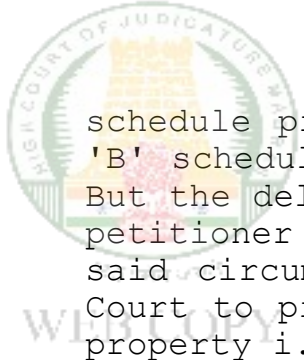
6. It is not in dispute that the suit of the respondent was dismissed on contest by the trial Court, against which, the respondent preferred first appeal, which was allowed, thereby the suit was decreed. Aggrieved by the judgment of the first appellate Court, the petitioner filed S.A.(MD)No.388 of 2013 and the same was dismissed by this Court, thereby confirmed the judgment of the first appellate Court. Thus, the judgment and decree passed in S.A.(MD)No.388 of 2013 attained finality.

7. The grievance of the petitioner is that delivery of "B" schedule is not maintainable as the property was not identified and not located by specification and more over, the plan appended to the judgment in S.A.(MD)No.388 of 2013 does not have specific measurement and area.

8. According to the petitioner Re-Survey No.291/1 was already sub-divided into 292/1A and 1B in which Re-Survey No.292/1B belongs to the petitioner, which was not shown in the plan appended to the judgment in the Second Appeal and there is no plot of 37 cents. Therefore, it is not possible to demarcate 8 cents out of 37 cents.

9. It appears that the contention of the petitioner that the property is not identified and not located by specific measurement are not legally acceptable since the said contentions were raised by the petitioner before the trial Court as well as before the Appellate Courts and the same were negatived by the Court below and held that the petitioner has no right in Re-Survey No.292/1. The Court came to the conclusion that the respondent have right up to the western boundary of S.No.292/1 which is the eastern boundary of S.No.293/10. The Court below also held that the sub-division of Re-Survey No.291/1 into 292/1B in the name of the petitioner would not confer any right. Therefore, from the above categorical finding, it is crystal clear that the entire S.No.292/1 belongs to the respondent and his brothers. The question of identity and specific measurement would not arise.

10. Further contention of the petitioner that the rough sketch appended to the decree in the Second Appeal does not have any measurement and therefore, it is difficult for the Amin to identify the "B" schedule property, is also legally not sustainable. On a perusal of the records it is found that the Amin visited the suit



schedule property along with the Taluk Surveyor and identified the 'B' schedule property i.e. upto the western boundary of S.No.292/1. But the delivery of the suit schedule property was obstructed by the petitioner and his associates. Taking into consideration the above said circumstances this Court is inclined to direct the Executing Court to provide suitable police force for delivery of 'B' schedule property i.e. upto the western boundary of S.No.292/1.

11. It is apposite to note that the petitioner's brother namely Dayanandharaj, had filed a Claim Petition being E.A.No.224 of 2016 in E.P.No.45 of 2016 in O.S.No.527 of 2005 and the same was dismissed by the Executing Court by an order dated 12.10.2017. It is the say of the respondent that the petitioner's brother has raised the same issue which has been raised in the Execution Petition and the Executing Court having found that the petitioner's brother had failed to establish his right and title over the property, dismissed E.A.No.224 of 2016 and the said order attained finality. In fact, the petitioner by adopting an illegal tactics in delaying the execution proceedings had raised the similar claim, which is absolutely barred by the principles contemplated by law.

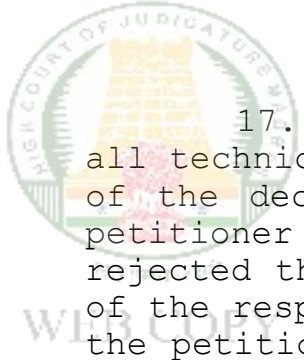
12. As rightly held by the Executing Court, if a decree has been granted in favour of a person, it is the duty of the Executing Court to execute the decree by all means without going beyond the decree. The Executing Court has also rightly observed that though the rough sketch appended to the judgment does not disclose the measurements, it is easy to locate "A" schedule property first and then identify and/or locate "B" schedule in the 2nd item of "A" schedule that is upto the western boundary of Survey No.292/1.

13. The arguments of the petitioner that there is no "B" schedule property and therefore, delivery of "B" schedule property could not ordered cannot be countenanced as the Executing Court cannot go behind the decree passed in favour of the respondent.

14. It is pertinent to note that in a catena of judgments, this Court as well as the Apex Court held that an Executing Court cannot travel beyond the order and/or decree under execution.

15. It is also well settled that the Executing Court gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 of the Code of Civil Procedure, 1908.

16. In Ravinder Kaur v. Ashok Kumar, reported in (2003) 6 SCC 289, the Hon'ble Supreme Court held that "the court of law should be careful enough to see that the diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them and such type of actions by the judgment debtor should not be encouraged and it would only cause delay and bring bad name to the judicial system."



17. Admittedly, in the case on hand, the petitioner has taken all technicalities depriving the respondent from enjoying the fruits of the decree. As stated supra, in the Court below itself, the petitioner has taken all pleas and the Court below have rightly rejected the plea of the petitioner, and decreed the suit in favour of the respondent. Therefore, as held by the Hon'ble Supreme Court, the petitioner cannot contend in the Execution Proceedings that the property sought to be delivered is not available for delivery at this point of time.

18. It is settled that Executing Court should not allow the technicalities to come in the way of the decree holder enjoying the fruits of the decree and the Court must favour possible execution and not deprive the rights of the decree holder on technical grounds.

19. At this juncture, it is to be pointed out that while allowing the Execution Petition and ordering delivery of "B" schedule property in favour of the respondent, the Executing Court observed as under:

"8. The learned counsel for the respondent argued that there is no prayer to that effect. However to execute the decree this court deemed fit to order delivery of the B schedule property with the help of assistant of Taluk Surveyor. Further the plan appended to the Judgment is mere a graph or plan to show the sketch of the schedule properties and the property of defendants as per the documents submitted before the court and therefore, it will not help the court to deliver the B schedule property on the basis of the plan and therefore, this court inclined to order delivery of the B schedule property to the petitioner. The Amin shall seek the help of Taluk Surveyor and he shall locate the A schedule property and then deliver the B schedule property as per decree"

20. Thus, qua location of the property either "A" or "B" schedule, the Executing Court directed the Amin to seek assistance of the Taluk Surveyor and the Taluk Surveyor was directed to locate first the "A" schedule property and the Amin was directed to deliver "B" schedule property to the respondent. The aforesaid direction of the Executing Court appears to be bonafide.

21. For the foregoing reasons, the Executing Court has rightly allowed the Execution Petition and ordered delivery of "B" schedule property, which warrants no interference. There is no illegality and/or perversity in the order of the Executing Court. No valid grounds have been made out to interfere with the order of the Executing Court and the Civil Revision Petition is liable to be



22. In the result, the Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-II)

Sub Assistant Registrar (CS-IV)

To

The Principal District Munsif,
Kuzhithurai.

+1CC to Ms.J.ANANDHAVALLI, Advocate, SR.No. 76696

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