



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2018

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANC.R.P (NPD) (MD) .No.1343 of 2018 and
C.M.P. (MD) No.5793 of 2018

Pushpammal

... Petitioner/7th Respondent/
5th Defendant**Vs.**

1. A.Deivendran Chettiar

... 1st Respondent/1st Petitioner/
2nd Defendant

2. D.Seenivasan

3. D.Selvaraj

4. D.Saravanan

... Respondents 2 to 4/
Petitioners 2 to 4/3rd Party

5. A.Suriya Narayanan

... 5th Respondent/1st Respondent/
Plaintiff

6. Sarathambal

7. Shanmugavalli

8. Tamilarasi

9. Balasubramanian

10.Rajathi

Pitchai Chettiar(Died)

... Respondents 5 to 10/
Respondents 1 to 6/
LRs of 1st Defendant

(R-5 to R-10 are not necessary parties

vide order dated 25.07.2018 in C.R.P.No.1343 of 2018)

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to call for the records of the lower Court and allow this Civil Revision petition and set aside the fair and decreetal order dated 28.07.2017 passed in E.P.No.20 of 2016 in O.S.No.288 of 1981 on the file of the III Additional Subordinate Judge, Madurai.

For Petitioner

: Mr.V.Ramakrishnan

For R-1 to R-4

: Mr.T.Arul

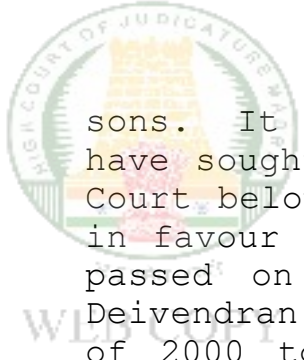
**ORDER**

O.S.No.288 of 1981 on the file of the III Additional Sub Judge, Madurai, was a suit for partition instituted by A.Suriya Narayanan against his brothers A.Pitchai Chettiar and A.Deivendran Chettiyar and four other persons. The plaintiff wanted declaration and separate possession of his 1/3rd share in the suit property. Preliminary Decree was passed on 26.11.1983. I.A.No.398 of 1984 was filed for passing final decree. In the said final decree proceeding, the Advocate Commissioner filed report and plan dividing the suit property into "A" schedule, "B" schedule and "C" schedule and "E" schedule. Final decree was passed on 17.02.1989 in I.A.No.398 of 1984 allotting the shares of the plaintiff Suriya Narayanan. A.S.No.1483 of 1988 questioning the Preliminary Decree was dismissed on 25.08.1999.

2. The contesting respondent herein, namely, Deivendran Chettiar filed I.A.No.146 of 2000 to furnish stamp papers for engrossing the final decree and the same was allowed on 23.12.2003. He later filed I.A.No.614 of 2012 for allotting "B" schedule property and the same allowed on 17.09.2012. He filed E.P.No.58 of 2013 seeking physical delivery and realising that he cannot ask for such a relief, did not press the same. Respondents 1 to 4 herein thereafter filed E.P.No.20 of 2016 for symbolic delivery. The executing Court ordered symbolic delivery on 28.07.2017 and the same was effected by affixture on 11.09.2017. This is questioned in this Civil Revision petition at the instance of the fifth defendant in the suit, namely, Pushpammal.

3. As already pointed out, the plaintiff and defendants 1 and 2 had claimed 1/3rd share each over the suit property. Pitchai Chettiar had sold "A" schedule property that was allotted to him in favour of the sons of the Revision petitioner. Likewise, Suriyanarayanan, the original plaintiff had sold "C" schedule and "E" schedule properties to the sons of the Revision petitioner. Thus, except "B" schedule property that was allotted to Deivendran Chettiar, the remaining portions of the suit property have already come to be vested in the family of the Revision petitioner.

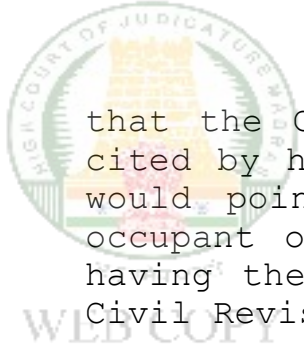
4. The learned counsel appearing for the Revision petitioner raised very many contentions, questioning the order passed by the executing Court directing symbolic delivery. His foremost contention is that the execution petition filed by the first respondent herein is barred by limitation. He pointed out that as per Article 136 of the Limitation Act, 1963, 12 years has been prescribed as the period for the execution of any decree, other than a decree granting mandatory injunction. The final decree in this case was passed as early as on 17.02.1989. He also contended that the first respondent has been adopting dubious methods to overcome the limitation bar. He took me through the contents of E.P.No.20 of 2016 filed by the first respondent and his three



sons. It is seen therefrom that the contesting respondents herein have sought to execute the final decree dated 17.09.2012. But the Court below has given a finding that the final decree was passed in favour of the Deivendran Chettiar on 23.12.2003. An order was passed on the said date in I.A.No.146 of 2000 filed by the Deivendran Chettiar. The Deivendran Chettiar had filed I.A.No.146 of 2000 to furnish stamp papers in order to engross the final decree thereon. On 23.12.2003, the said Interlocutory application was allowed.

5. A mere look at the affidavit filed in support of I.A.No.146 of 2000 would show that the parties were under the clear impression that as per the final decree dated 17.02.1989, "B" schedule property has been allotted to the Deivendran Chettiar. In fact none of the parties were in any doubt in this regard. A.Pitchai Chettiar and his two brothers filed O.S.No.434 of 1999 on the file of the II Additional Subordinate Judge, Madurai, against some third parties and in the said suit, I.A.No.203 of 1999 was filed. In paragraph No.5 of the affidavit filed in support of the said Interlocutory application, it has been mentioned that the final decree was passed on 17.02.1989 and according to the terms of the final decree, Pitchai Chettiyar was allotted "A" schedule property, Deivendran Chettiyar was allotted "B" schedule property, while Suriyanarayanan was allotted "C" and "E" schedule properties. In fact, the Deivendran Chettiyar had executed settlement deeds only on that basis in favour of his sons. Therefore, there cannot be any doubt whatsoever about the date of the final decree. The starting point of limitation for enforcing the final decree began to run from 17.02.1989.

6. The learned counsel appearing for the Revision petitioner placed reliance on the decisions of the Hon'ble Supreme Court reported in (2001) 7 S.C.C. 573 (Hameed Joharan(dead and others Vs. Abdul Salam(Dead) by LRs and others), (2005) 10 S.C.C.746 (Dr.Chiranjilal(D) by LRs. Vs. Hari Das(D) by LRs) and (2012) 3 S.C.C. 548 (Bimal Kumar and another Vs. Shakuntala Debi and others) in this regard. Elaborating the propositions laid down in the aforesaid decisions, the learned counsel contended that the delay on the part of the Deivendra Chettiar in furnishing stamp papers for engrossing the final decree will not result in postponement of the initial date from which the limitation would start running. In other words, engrossing of decree on stamp papers though would make a decree executable, would not mean that enforceability of the decree in terms of Article 136 of the Limitation Act 1963, remains suspended until the stamp paper is furnished. He also contended that since the parties have arrived at a compromise among themselves, their rights stood crystallized even before the filing of I.A.No.146 of 2000 in O.S.No.288 of 1999. He further contended that he wanted this Court to take into account, I.A.No.203 of 1999 filed in O.S.No.434 of 1999 on the file of the II Additional Subordinate Judge, Madurai. He further contended



that the Court below has not properly appreciated the case laws cited by him and the legal contentions advanced by him. He also would point out that the Revision petitioner being a physical occupant of a portion of the "B" schedule property is very much having the locus standi to challenge the order impugned in this Civil Revision petition.

7. It is true that both the preliminary decree as well as the final decree passed in O.S.No.288 of 1981 were challenged by filing first appeals before the High Court. A.S.No.1483 of 1988 questioning the preliminary decree was dismissed on 25.08.1999. A.S.No.1247 of 1990 filed by the Pitchai Chettiar against the final decree dated 17.02.1989 was dismissed on 28.02.2007. Sri.T.Arul, learned counsel appearing for the contesting respondents submitted that 28.02.2007 should be taken as the starting point for limitation.

8. His contention is that when an appeal is prescribed under a statute and the appellate forum is invoked and the appeal is entertained, for all intent and purport, the suit continues. When the appellate Court passed a decree, the decree of the trial Court merges with the decree of the appellate Court. In other words, the decree of the appellate Court supersedes the decree of the trial Court. But this contention based on the doctrine of merger would apply only, if the decree of the appellate Court is on merits. But in this case, A.S.No.1247 of 1990 filed by the Pitchai Chettiar was dismissed as not pressed. It was not a Judgment on merits. Therefore, the doctrine of merger will clearly not apply in this case. The decision of the Hon'ble Supreme Court reported in (2004) 8 S.C.C. 724 (Chandi Prasad and others Vs. Jagdish Prasad and others) is on the point and therefore, this contention urged by the learned counsel for the contesting respondents has to be only stated to be rejected.

9. It is also true that the first respondent herein A.Deivendran Chettiar has been litigating in a state of confusion. He filed E.P.No.58 of 2013 on 31.01.2013, but allowed it to be dismissed as not pressed on 08.12.2015. This Court called upon the learned counsel appearing for the contesting respondents as to why this execution petition was allowed to be dismissed as not pressed. The learned counsel answered that they could have only asked for symbolic delivery. But then, the Deivendran Chettiar chose to apply for actual and physical delivery. Likewise, he filed I.A.No.146 of 2000 in O.S.No.288 of 1981 for furnishing the stamp papers for engrossing the final decree. Deivendran Chettiar was under the impression that in the final decree made in I.A.No.398 of 1984 in O.S.No.288 of 1981 on 17.02.1989, he has been allotted "B" schedule property.

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

10. A mere look at the final decree dated 17.02.1989 made in I.A.No.398 of 1984 in O.S.No.288 of 1981 would show that only the



plaintiff Suriyanarayanan was allotted "C" and "E" schedule properties. No allotment was made in favour of the Deivendran Chettiar. When no allotment of share has been made in favour of the Deivendran Chettiar, the question of engrossing the said decree in stamp papers will simply not arise. I.A.No.146 of 2000 was an infructuous application. It is true that such application was allowed on 23.12.2003. But that has no legal consequence.

11. Since no share was allotted in favour of Deivendran Chettiar in I.A.No.398 of 1984 in O.S.No.288 of 1981 on 17.02.1989, 17.02.1989 could not have been the starting point of limitation for filing of execution petition. The contention that E.P.No.20 of 2016 is time barred is patently incorrect. This submission is predicated on the premise that E.P.No.20 of 2016 has been filed to execute and enforce the final decree on 17.02.1989. As already pointed out, the said final decree dated 17.02.1989 pertains only to Suriyanarayanan and not to Deivendran Chettiar. Once this aspect of the matter is clarified, the entire foundation of the Revision petitioner's case gets undermined. In fact, final decree was actually passed in favour of Deivendran Chettiar allotting "B" schedule property only on 17.09.2012. The trial Court had correctly characterised the said proceeding as a final decree. It is beyond dispute that the Revision petitioner herein has not questioned the final decree dated 17.09.2012 in I.A.No.614 of 2012 in I.A.No.146 of 2000 in O.S.No.288 of 1981. E.P.No.20 of 2016 states that it has been filed to execute the final decree dated 17.09.2012. The executing Court needlessly got confused or probably swayed by the eloquence of the learned counsel for the Revision petitioner and proceeded to hold that the final decree was passed on 23.12.2003. That is why, the learned counsel appearing for the Revision petitioner was able to exploit this erroneous finding by contending that I.A.No.146 of 2000 was filed only to furnish the stamp papers for engrossing the final decree.

12. The Revision petitioner was inducted as a tenant in the suit property. She had purchased in the names of her sons, the schedules allotted in favour of the other two brothers. Admittedly she is not having any title or claim over the "B" schedule property. The contesting respondents have instituted Rent Control proceedings for evicting the Revision petitioner from "B" schedule property. Thus, the Revision petitioner is not going to be unlawfully dispossessed. The contesting respondents have taken recourse to law to secure possession of the "B" schedule property. What has been granted to the contesting respondents is only symbolic delivery in respect of "B" schedule property. The Revision petitioner's rights have not in any way been infringed. The defences available to the Revision petitioner in all aspects in the eviction proceedings are left open. The execution petition has been filed well within time. By no stretch of imagination can it be stated to be time barred. There is no merit in this Civil Revision petition.



13. The Civil Revision petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The III Additional Subordinate Judge,
Madurai.

Copy To:-

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

+ 1 CC TO Mr.V.RAMAKRISHNAN, ADVOCATE IN SR No. 88567
+ 1 CC TO Mr.T.ARUL, ADVOCATE IN SR No. 88783

PMU
TE/PM/SAR-4 : 29/10/2018 : 6P/6C

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C.M.P. (MD) No.5793 of 2018
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