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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 03.04.2018
DELIVERED ON : 10.08.2018
CORAM

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

C.R.P. (MD) (NPD) No.523 of 2018

and

CMP (MD) No.2287 of 2018

Shanmugam

.. Petitioner

vs

1.Aranthangi Co-operative Town Bank Ltd.,
No.4060, rep. by its Secretary,
Aranthangi Town and Taluk,
Pudukottai District.

2.Savithri

.. Respondents

Revision filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 09.01.2018 passed in E.A.No.92 of 2007 in E.P.No.47 of 2006 in O.S.No.51 of 1982 on the file of the District Munsif Court, Aranthangi.

For Petitioner	: Mr.M.Suresh
For Respondents	: Mr.I.Vel Pradeep (for R1)No Appearance (for R2)

ORDER

This Civil Revision Petition is directed against the order dated 09.01.2018 passed in E.A.No.92 of 2007 in E.P.No.47 of 2006 in O.S.No.51 of 1982 on the file of the District Munsif Court, Aranthangi, dismissing the petition filed by the petitioner.

2. The petitioner is a third party obstructor. The 1st respondent is the decree-holder and the second respondent is the judgment-debtor.

3. The first respondent filed E.P.No.92 of 2007 for delivery of vacant possession of the petition mentioned property, wherein the petitioner has filed E.A.No.92 of 2007 under Order 21, Rule 97 of C.P.C. seeking to declare that the petition mentioned property belongs to the petitioner and release the same from the Execution Petition.

4. Resisting the petition, the first respondent filed counter stating that the property sought to be recovered by the first respondent was a small extent of ½ cents with east-west and south-north measurements of 42 and 52 feet respectively and it lies just adjacent to the Head Office building of the first respondent's bank. It is stated that having fully aware of the earlier suit



proceedings, the petitioner had purchased the property and he is not a bonafide purchaser and prayed for dismissal of the petition.

5. Before the Executing Court, the petitioner examined himself as P.W.1 and one Mayandi was examined as P.W.2. Exs.P1 to P4 were marked on the side of the petitioner. No oral and documentary evidence was adduced on the side of the first respondent.

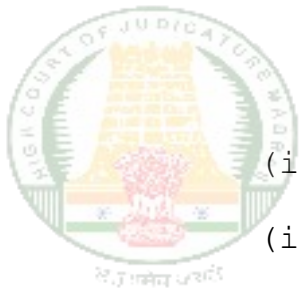
6. Upon consideration of the rival submissions, the Executing Court dismissed E.A.No.92 of 2007. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

7. I heard Mr.M.Suresh, learned counsel for the petitioner and Mr.I.Vel Pradeep, learned counsel for the first respondent and also perused the materials available on record. No representation on behalf of the 2nd respondent.

8. The learned counsel for the petitioner submitted that the Executing Court ought to have seen that the extent of the suit schedule mentioned property given in the plaint is confusing, vague and unclear. Unless the extent of encroachment had been described exactly in the plaint schedule, it is impossible to identify the uncertain extent of encroachment. He would submit that the decree has become inexecutable without identifying actual extent of encroached land to be recovered on the ground. He would further submit that the Executing Court ought to have seen that unless and otherwise it is ascertained and proved that the first respondent's property was covered within the boundaries of the petitioner, the question of lis pendens would not arise.

9. According to the learned counsel the Executing Court was not correct in dismissing the petition filed by the petitioner on the ground that Ex.P1, sale deed dated 06.02.1986 was hit by the doctrine of lis pendens. He would contend that though the petitioner established the title of the vendor Chandran by way of documentary evidence, the Executing Court has failed to appreciate the same and dismissed the petition and prayed setting aside the order of the Executing Court. In support of his submission, the learned counsel cited the decision in Annapoorni v. Janaki, reported in 1995-I-L.W. 141.

10. Per contra, the learned counsel for the first respondent submitted that as against the order passed in E.A.No.92 of 2007, only appeal will lie and the said order cannot be challenged by way of Civil Revision Petition. In so far as the prayer sought for by the petitioner in E.A.No.92 of 2007 is concerned, the learned counsel submitted that the petitioner has no right to seek relief to declare him as an obstructor to the petition mentioned property and he had no right to file such petition. He would submit the Executing Court has rightly dismissed the petition and the same warrants no interference. To fortify his submissions, the learned counsel cited the following decisions:



- (i) S.Rajeswari v. S.N.Kulasekaran and others,
reported in (2006) 4 SCC 412.
(ii) C.Murugan v. Dr.Thilagavathy and another,
reported in 2015 (1) CTC 516.

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11. It is an admitted fact that the petitioner has purchased the property during the pendency of the suit filed by the first respondent, which was evident from Ex.P1-sale deed produced by the petitioner before the Executing Court.

12. According to the petitioner, unless the identity of the property and the exact measurement has been proved by the decree-holder, it could not be held that the property purchased under Ex.P1-sale deed is covered by the subject matter in O.S.No.51 of 1982 on the file of the District Munsif Court, Aranthangi.

13. For proper appreciation, the schedule of the property, which is stated to be delivered possession as per the decree in O.S.No.51 of 1982 is set out herein below:

"Pudukottai District, Aranthangi taluk, Aranthangi village, Survey No.45/9, Extent approximate 1-1/2 Kulis out of 4.39 acres, measurements east west 42 feet, south north 52 feet.

Boundaries : East of Pudukottai Road, North and West of Plaintiff, South of Nagiah Chettiar and Arunachalam manaiket."

14. Relying upon the decision in Annapoorni v. Janaki, supra, the learned counsel for the petitioner argued that when the Court finds that the decree suffers from an error of law apparent on the fact of the record, the Court cannot allow the decree to be in force.

15. In Annapoorni v. Janaki, supra, the learned Single Judge of this Court held:

"11. When this Court finds that a decree suffers from an error of law apparent on the fact of the record owing to non-application of mind of the Court, to the relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of a deceased Hindu. There is no earthly reason for depriving the mother of the deceased of her legitimate share in the estate which in this case happens to be a moiety. This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of this Court. It is only for that reason, I am exercising my powers under



Section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India."

16. It is to be noted that the Executing Court empowers to decide the right and title over the third party obstructor in a petition filed under Order 21, Rule 97 of C.P.C. As stated supra, the petitioner has purchased the property when the suit is pending and thus the purchase is hit by the principles of lis pendens. Moreover, as rightly held by the Executing Court, the petitioner has failed to prove the right and title of his vendor Chandran and also how Chandran has got right over the property sold to him. It is the bounden duty of the petitioner to prove that his vendor Chandran has right and title over the property referred by the petitioner.

17. Upon analysing the oral and documentary evidence produced by the petitioner, the Executing Court arrived at a finding that the petitioner has failed to establish the right and title of Chandran over the property and Exs.P1 to P4 produced by the petitioner do not help the case of the petitioner to show that he was the bonafide purchaser. The aforesaid finding of the Executing Court is acceptable and the same needs no interference.

18. As far as the maintainability of the Civil Revision Petition against the order passed in a petition filed under Order 21, Rule 97 of C.P.C., is concerned, in S.Rajeswari v. S.N.Kulasekaran and others, supra, the Hon'ble Supreme Court held as under:

"11. Having heard learned counsel for the parties, we are satisfied that in a case of this nature, Respondent 1 ought to have filed an application under Order 21 Rule 97 of the Code of Civil Procedure. Order 21 Rule 97 clearly provides that where execution of decree is resisted or obstructed by any person, the decree-holder may make an application to the court complaining of such resistance or obstruction, whereupon the court shall proceed to adjudicate upon the application in accordance with the provisions contained in the Code. Rules 98 to 100 are the rules which provide the manner in which such an application has to be dealt with. Under Rule 101, all questions including the questions relating to right, title and interest of property arising between the parties to the proceedings and relevant to the adjudication of the application, have to be determined by the court dealing with the said application. Rule 103 provides that when an application is adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. It thus follows that if an application is made under Order 21 Rule 97, which is adjudicated upon by the court, the adjudicatory order is treated as a decree against which an appeal may be filed. In the instant



case, therefore, since the adjudicatory order passed by the executing court went against Respondent 1, he ought to have filed an appeal before the High Court."

19. In C.Murugan v. Dr.Thilagavthy and another, supra, held:

"18. The Hon'ble Apex Court in the judgment reported in S.Rajswari v. S.N.Kulasekaran and others, 2006 (3) CTC 171 (SC) : 2006 (4) SCC 412, has held that the order passed under Order 21, Rule 97, must be treated as Decree against which only an appeal will lie and the order cannot be challenged under Section 115 of C.P.C."

20. Thus, it is clear that an order passed in a petition filed under Order 21, Rule 97 of C.P.C., must be treated as a decree, against which only an appeal will lie to the Appellate Court.

21. In view of the provisions of Order 21, Rule 103 of C.P.C., which provides for appeal against the order passed by the Executing Court in an application filed under Order 21, Rule 97 of C.P.C., no revision could be entertained by the High Court against that order in view of the clear prohibition contained in Section 115 (2) of C.P.C., which in clear terms provides that the High Court shall not under Section 115, vary or reverse any decree or order against which an appeal lay either to the High Court or to any other Court subordinate thereto.

22. In Mansoor Deen, M.S. and 5 others v. Fathimuthu Beevi and 7 others, reported in 2009 (4) CTC 489, this Court held that as per Section 52 of the Transfer of Property Act and the object and scope of Order 21, Rule 97 of C.P.C., the transferees pendente lite from the judgment debtor have no independent right and their application does not require adjudication under Order 21, Rule 97 of C.P.C.

23. As far as the right over the petition mentioned property is concerned, as held by the Executing Court, the petitioner has failed to establish his vendor's title to alienate the same to the petitioner and further, the purchase of the property by the petitioner during the pendency of the suit is hit by the principles of lis pendens.

24. Qua the maintainability of the Civil Revision Petition is concerned, as stated supra, as against the order passed in an application under Order 21, Rule 97 of C.P.C., appeal only would lie and the Civil Revision Petition is not maintainable.

25. In the result, the Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.



After pronouncing the order, the learned counsel appearing for the petitioner represented that liberty may be given to file an appeal against the order passed in E.A.No.92 of 2007 under Order 21, Rule 97 of C.P.C.

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2.Considering his request, this Civil Revision Petition is dismissed by giving liberty to the petitioner to file an appeal against the order passed in E.A.No.92 of 2007 in E.P.No.47 of 2006 in O.S.No.51 of 1982 within a period of two weeks from the date of receipt of a copy of this order and the Appellate Court is directed to number the appeal without considering the limitation for the period in which this Civil Revision Petition is filed and pending against the order passed in E.A.No.92 of 2007 before this Court.

3.It is made clear that the Appellate Court without influencing any averments made in the order of this Civil Revision Petition and to pass an order on merits by considering the appeal independently.

4.The Registry is directed to return the original judgment and decree to the petitioner.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To
The District Munsif,
Aranthangi.

Copy to:
The Section Officer,
E.R.Section,
Madurai Bench Of Madras High Court,
Madurai.

+1CC to Mr.M.Suresh Advocate in SR.No.78320.

VSV
DS/SKN-RSK/SAR-1 :16.08.2018: 6P/4C

Pre-delivery order made in
C.R.P. (MD) (NPD) No.523 of 2018
and
CMP (MD) No.2287 of 2018
10.08.2018