

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No. 3062 of 2013

and

M.P.No. 1 of 2013

Mayavan (Died)
Jayavalli (Died)
Rep.by her LRs
viz., the petitioners and the respondents 2 and 3

1.Ravi
2.Kamala Kannan
3.Kalpana

... Petitioners

Vs.

1.Saravana Mudaliar

Vadamalai Counder (died)
Srinivasan (died)

2. Dhananjayan
3. P. Saradambal @ Sadana
4. Maragathammal
5. Karthikeyan
6. Annapoorani
7. Pargunnen
8. Padmavathy
9. Barathen
10. Vissalatchy @ Vimala
11. Subramani

... Respondents

(Cause title accepted vide order dated 30.07.2013
made in M.P.No.2 of 2013 in C.R.P.Sr.No.100479 of 2011)

PRAYER: The Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 08.08.2011 made in E.A.No.7 of 2006 in E.P.No.230 of 1998 in O.S.No.190/1971 on the file of the Principal District Munsif Court, Pondicherry.

For Petitioners : Mr.T.P.Manoharan
Senior Counsel for
Mr.K.P.Jotheeswaran

For Respondents : Mr.T.Saikrishnan for R1
Ms.P.V.Rajeswari for R3
R2, R4 to R12 (memo filed)

ORDER

This revision petition has been filed as against the order of the Execution Court dismissing the application filed under Section 47 of the Code of Civil Procedure.

The brief facts leading to the instant revision petition is as follows :

One Saravana Mudaliar filed a suit in O.S.No.190 of 1971 on the file of the Principal District Munsif Court, Pondicherry against one Vadamalai Counder and the same was decreed in the following terms :

“ .. In view of my findings in the precedent issues the suit is decreed as prayed for. I am of the opinion that since the plaintiff failed to pay Rs.1500/- to Alavandar and that the defendant himself discharged the above debt on 14.11.1970 it will be just and equitable that the plaintiff pays to the defendant in addition to Rs.1500/- the interest due on the principal amount of Rs.1000/- from 20.07.1970 upto 14.11.1970 at the rate of 8%. Hence, the plaintiff is declared owner of the suit property by virtue of sale deed dated 20.07.1970. The defendant is directed to deliver to the plaintiff vacant manai mentioned in the above sale deed on payment of Rs.1500/- + interest on Rs.1000/- from 20.7.1970 upto 14.11.1970 at the rate of 8%. Each party to bear his own costs.”

3. The above decree has become final and no appeal was filed by the judgment debtor there against. The above decree and judgment was put in execution in the year 1983 within the period of limitation in E.P.No.560 of 1983.

However, the same was dismissed for default. Thereafter, in the year 1984, the first

respondent filed another application in E.P.No.266 of 1984 and obtained delivery order, however, in the above said Execution Petition, the Amin has returned the warrant stating that the Survey numbers did not tally. At this stage the judgment debtor's son Mayavan filed a suit in O.S.No.299 of 1977, for declaring the sale deed in favour of the decree holder as null and void and the same was dismissed on merits on 11.07.1978. Aggrieved over the judgment and decree, Mayavan filed an appeal in A.S.No.123 of 1978 and the same was dismissed on 12.11.1983. Thereafter, he filed Second Appeal in S.A.No.1967 of 1984, pending disposal of the Second Appeal, he filed a petition in C.M.P.No.16775 of 1984 and sought for an order of interim injunction restraining the decree holder in O.S.No.190 of 1971 from executing the decree. This Court, by order dated 19.06.1985, granted an order of injunction restraining the decree holder in O.S.No.190/1971 from executing the decree till the disposal of the Second Appeal. Ultimately, the Second Appeal in S.A.No.1967 of 1984 was dismissed as abated.

4. Thereafter, again a fresh Execution petition in E.P.No.230 of 1998 was filed to execute the decree in O.S.No.190/1971. It is to be noted that pending disposal of the Second Appeal, Mayavan died. After dismissal of the Second Appeal, the revision petitioners, being the legal representatives of Mayavan filed a Petition under Section 47 of C.P.C. mainly on two grounds that the decree is in-executable, since it is a conditional one and the amount mentioned in the decree has not been paid, therefore, it cannot be executed. The next contention is that the property has not been identified and therefore, the decree is not executable. The trial Court viz., the Execution Court has considered the entire submissions and dismissed the application. As against which, the present revision petition is filed.

5. The main contention of the learned counsel for the revision petitioners is that the decree in O.S.No.190 of 1971 is a conditional decree. The decree would be completed only on payment of Rs.1,500/- along with interest on Rs.1000/-. As long as the amount has not been paid and the condition has not been complied with, the decree could not become final. It is the further contention of the learned counsel for the revision petitioners that without complying with the conditional order, the first respondent filed an Execution Petition in E.P.No.560 of 1983, for execution of decree. But, as long as the amount has not been paid, the decree cannot be executed. It is the further contention that the decree holder has filed many applications to amend the survey number and the same have been dismissed and reached its finality. That being the position, the decree as such cannot be executed.

6. The learned counsel for the first respondent would contend that the decree did not contemplate the deposit of amount. In the earlier Execution Petition delivery was ordered. The same would clearly indicate that the amount ordered to be paid in decree has already been paid. If those amount have not been paid in the earlier occasions, delivery would not have been ordered. However, the revision petitioners' father has challenged the sale deed in O.S.No.299/1977, but, there is no whisper about the non payment of alleged decree amount and he has attempted to stultify the decree and judgment and filed the second appeal. The father of the revision petitioners himself has not raised any objections with regard to the payment contained in the decree clause. Now, the legal heirs have no right to introduce such plea under Section 47 of C.P.C. It is further contended that the property is clearly identifiable and the boundaries and the cadastre numbers are

very much in existence. Hence, the learned counsel submitted that trial Court has rightly dismissed the application.

7. The learned counsel for the third respondent supported the contention of the decree holder.

8. Heard the learned counsel for the petitioners, the learned counsel for the respondents 1 and 3 and perused the entire materials available on record.

9. The revision petitioners are the legal heir of Mayavan, who is the son of the Vadamalai Counder/judgment debtor in O.S.No.190 of 1971. No doubt, the suit in O.S.No.190 of 1971 was decreed as referred above only by considering equity and a sum of Rs.1,500/- along with interest on Rs.1000/- was ordered to be paid. Though the decree was passed in the year 1974, thereafter, two Execution Petitions in E.P.No.560 of 1983 and E.P.No.266 of 1994 have been filed and in E.P.No.266 of 1984, delivery was ordered. After full contest a warrant has been issued and it was returned by the Amin on account of change in cadastre number.

At this stage Execution Petition was closed. In the meanwhile, revision petitioners' father Mayavan filed Second Appeal as against the decree and judgment in O.S.No.190 of 1971 and he obtained interim injunction restraining the decree holder from executing the decree from 1985 till 1998 and the injunction was in force. Thereafter, the Second Appeal was dismissed as abated. Immediately, after dismissal of the Second Appeal within the period of limitation, the Execution Petition was filed. At this stage the application under Section 47 of the Code of Civil

Procedure has been filed on two grounds as stated above. It is curious to note that

the decree does not contemplate deposit of the amount, only as a direction to pay additional amount on equitable basis. If such amount has not been paid, the same would have been brought to the notice of the Court at the time of hearing of the earlier Execution Petition in the year 1983 and 1984. Those Execution Petitions were ordered after full contest. The judgment debtor, who is the grand father of the petitioners herein contested the Execution Petition in E.P.No.266 of 1984. However, no whisper whatsoever has been made regarding non payment of the amount. It is also curious to note that in the suit filed by Mayavan, which was pending till 1988, there is no whisper with regard to the non payment of the amount directed in the decree. Similarly, even in the Execution Petition in E.P.No.266 of 1984, this plea has not been raised. After the death of Mayavan, his legal heirs have also not taken such plea. Therefore, the very factum of the delivery order in E.P.No.266 of 1984 makes it clear that there was no grievance with regard to the payment of the amount. That being the position the legal heirs father contested the decree up to the second appeal but this issue has not been raised. Therefore, the revision petitioners, being the legal heirs of Mayavan, now cannot press into service one of the conditions in the decree to non suit the decree holder. In fact they cannot take a contra view or plea other than raised by their predecessor in title viz., their father and grand father. Such being the position, I am of the view that the contention of the revision petitioners the decree is in-executable cannot be countenanced. Similarly with regard to the identify of the property, the Execution Court has clearly found that it is only the Amin who has made such report without any authority, wherein the boundaries have been clearly identifiable and property can be delivered. Such being the position, I am of the view that whether the properties are identifiable or not cannot be the subject matter of decision under

Section 47 C.P.C. If the decree holder is able to establish the identify, he is certainly entitled for delivery of the property. Hence I do not find any merits in the revision petition.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.04.2019

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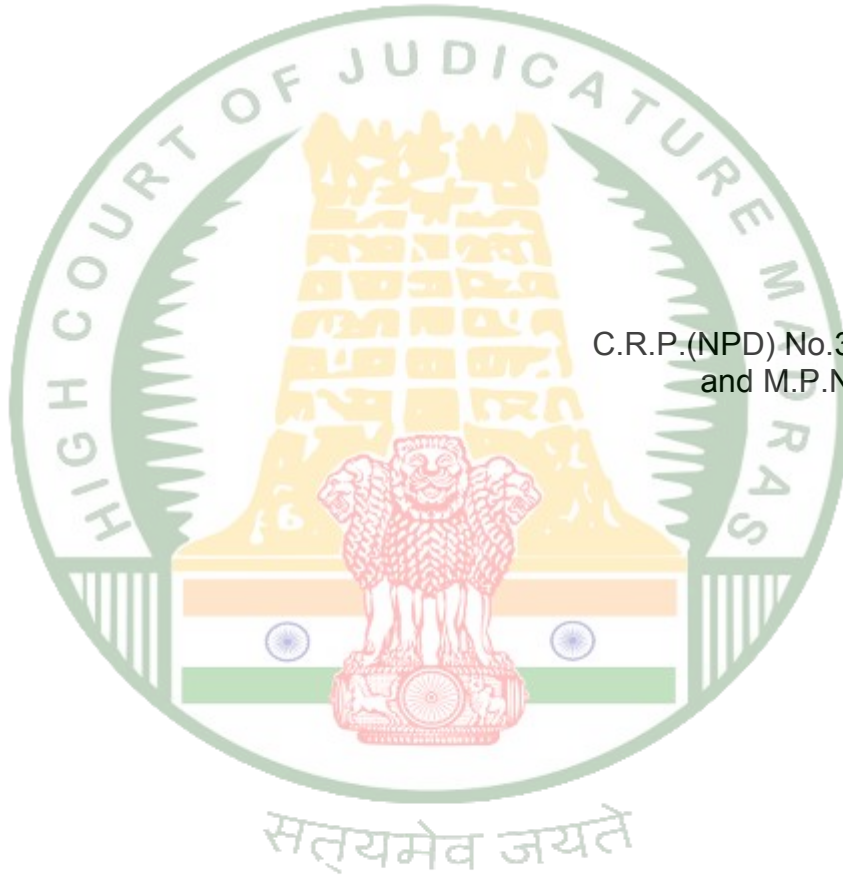
The Principal District Munsif Court,
Pondicherry.



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N. SATHISH KUMAR, J.,

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