

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.1031 of 2019

1.B.S.Sathyannarayan
2.B.S.Ramachandra
3.Smt.Saraswathi
4.B.S.Dwarakanath
5.B.S.Ragavan
6.Smt.Jyothi
7.B.S.Somanath
8.B.S.Sekar
9.B.S.Vishveswar

Petitioners 1 to 4 and 6 to 9 represented
by their Power of Attorney Agent
B.S.Raghavan 5th petitioner herein

....

Petitioners/Plaintiffs

Vs

1.Z.Mubarak
2.Mrs.Razia Begum
3.Mrs.Rithana Begum
4.Mrs.Fathima
5.Mrs.Kathija Begum
6.Mrs.Daulath

..... Respondents /Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 07.12.2018 passed in E.P.R.No.26 of 2017 in O.S.No.381 of 1995 on the file of District Munsif, Ootacamund.

For Petitioners : Mr.M.S.Krishnan,
Senior Counsel for
M/s.Sarvabhauman Associates

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O R D E R

This Civil Revision petition has been filed as against the order of the executing Court in closing the execution petition on the ground that the decree is not related to the building situated in the suit property.

2.The brief facts which lead to file this revision are as follows:

The decree holder is the owner of the property by virtue of their purchase and Judgment Debtors were originally in possession of the property who have filed a suit for specific performance in O.S.No.145 of 1984 to execute the sale deed in respect of the suit property measuring to an extent of 0.32-10/16 acres with specific boundaries including the building named 'Shanthinikethan'. The above suit has been dismissed on 06.10.1988 and subsequently, second appeal filed in S.A.No.1874 of 1991 has also been dismissed.

3.Further, it appears that the original owner of the suit property has filed a suit in O.S.No.381 of 1995 for recovery of possession of the above property which was originally the subject matter in O.S.No.145 of 1984. It appears that in the plaint, while mentioning the schedule of property, though the boundaries of the property are given, the building's name has been omitted to be mentioned in the schedule of property. Pursuant to the schedule of property, the suit has been decreed for the entire 0.32-10/16 acres in R.S.No.356 with specific boundaries. Hence, as the above suit has reached finality, it appears that the decree holder has taken execution proceedings in E.P.R.No.26 of 2017 and the same has been closed by the executing Court against which the present revision has been filed.

4.Mr.M.S.Krishnan, learned Senior Counsel for the petitioner has contended that in the execution proceedings, the Judgment debtors have somehow other protracted the service of notice. In many occasions, notices were returned unserved since the Judgment debtors were not residing in the said address and finally, they were set exparte on substituted service and delivery was ordered by the Court. When the amin went to execute the warrant, he has filed a report to the Court to the effect that he has identified the suit property and has also entered into the suit property and measured the extent of 0.32-10/16 acres. But he has returned the warrant stating that there is an incomplete building measuring an extent of 4300 Sq.ft., in the suit property which has not been covered in the warrant. On the basis of such report, the executing Court has closed the execution petition once for all on the ground that the decree does not relate to the building in the suit property. Since the Judgment debtors all along protracted the execution proceedings and remained exparte in the execution proceedings, notice to them is dispensed with.

5.I have perused the entire records and the orders of the trial Court. It is to be noted that on perusal of records and as rightly contended by the learned Senior Counsel, the identity of the property is not in dispute. Further, the Judgment debtor, while filing the suit for specific performance has

clearly mentioned the name of the building as 'Shanthinikethan'. Admittedly, the above building is situated inside the suit property bounded by specific boundaries and there is no dispute in the measurement and boundaries. Admittedly, the suit is decreed for entire extent with specific boundaries. It goes without saying that the decree also includes the building which is situated inside the suit property. Merely, as there is a omission either in the plaint or in the decree with regard to the building, it cannot be said that there must be a separate decree for the building which is admittedly in existence within the suit property, in respect of which, the decree has already reached finality. Therefore, this Court is of the view that closing the execution petition is against the very fundamental principles of law.

6. Even assuming that there was a omission in the plaint with regard to the building, the executing Court is not denuded with the power to permit the parties to make necessary amendments. In fact, Order XXI Rule 17 of Civil Procedure Code enables the parties to make necessary amendments in the execution proceedings. Similarly, Sections 151, 152 & 153 also give wide powers to the Court to permit the parties to make necessary amendments. As already discussed, the identity of the suit property is not at all in dispute. The existence of the building in the suit property is also not in dispute as it could be seen from the plaint filed by the Judgment debtor in O.S.No.145 of 1984. Therefore, the executing Court ought to have permitted the decree holder to make necessary amendments.

7. Further, it is also to be noted that whether really such amendment is required or not, has also not been decided by the trial Court. When the decree itself covers the entire suit property measuring 0.32-10/16 acres with specific boundaries, it is the duty of the amin to execute the delivery of the entire suit property including the super structures if any, there on. Hence, it cannot be expected from the Courts to pass decree for each and every super structures found in the suit properties. In fact, the decree is for the property which is identified not only by measurement, but also by boundaries. That being the case, the executing Court ought not to have closed the execution petition and in fact, should have directed the amin to execute the warrant on the basis of the decree to effect the delivery of the suit property.

8. Accordingly, the order of the trial Court is set aside. The trial Court is directed to restore the execution petition on file and further directed either to permit the parties to amend the plaint or to direct the amin to execute the decree in respect of the suit property including the incomplete buildings situated in the suit property. This order has been passed in

the admission stage itself and since, the respondents were remained exparte even in the trial Court which clearly indicates their conduct in dragging the execution proceedings, their notices are hereby dispensed with.

9. In the result, this Civil Revision Petition is allowed. The executing Court is hereby directed to execute the delivery of the suit property as per the above directions in accordance with law within a period of three months from the date of receipt of the copy of this Order.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif,
Ootacamund.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.26208

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C.R.P.No.1031 of 2019

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