

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.04.2019
Pronounced On	18.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P(NPD)No.1520 of 2014
and
M.P.No.1 of 2014

Annalakshmi

.. Petitioner

vs

Jagadeeswari

.. Respondent

Prayer: Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decretal order dated 18.11.2013 passed in E.A.No.172 of 2012 in E.P.No.113 of 2005 in O.S.No.07 of 1999 on the file of the I Additional Subordinate Court, Cuddalore.

For Petitioner : Mr.P.Mani

For Respondent : Mr.R.Gururaj

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ORDER

The respondent had earlier filed O.S.No.209 of 1997. It was dismissed on 23.02.1998 as compromised. Thereafter, the respondent filed O.S.No.07 of 1999 in respect of the same property, where the petitioner was the defendant.

2.O.S.No.209 of 1997 was filed for a specific performance of agreement dated 03.06.1996. The agreement was in respect of land in new Survey No.51/5. In O.S.No.07 of 1999, the respondent/plaintiff had however wrongly mentioned the survey number as Survey No.51/6 though in O.S.No.209 of 1997, the survey number was correctly mentioned as S.No.51/5.

3.Since the petitioner did not participate in O.S.No.07 of 1999, the petitioner was set ex-parte and the suit was decreed ex-parte. Pursuant to the exparte decree, E.P.No.121 of 2004 was filed by the respondent/plaintiff for execution of sale deed in terms of the exparte decree.

4.E.P.No.121 of 2004 was also allowed exparte on 21.06.2005. A sale deed was thereafter executed by the Court in E.P.No.121 of 2004.

5.Thereafter, E.P.No.113 of 2005 was filed for taking delivery of possession of the suit property by the respondent/plaintiff from the petitioner/defendant.

6.At that stage, the respondent/plaintiff filed E.A.No.172 of 2012 in E.P.No.113 of 2005 for correcting the survey number as Survey No.51/5, instead of Survey No.51/6 in the decree.

7.In the said application, the petitioner/defendant filed an objection and stated that the description of the property in the decree cannot be allowed to be corrected in an execution proceeding.

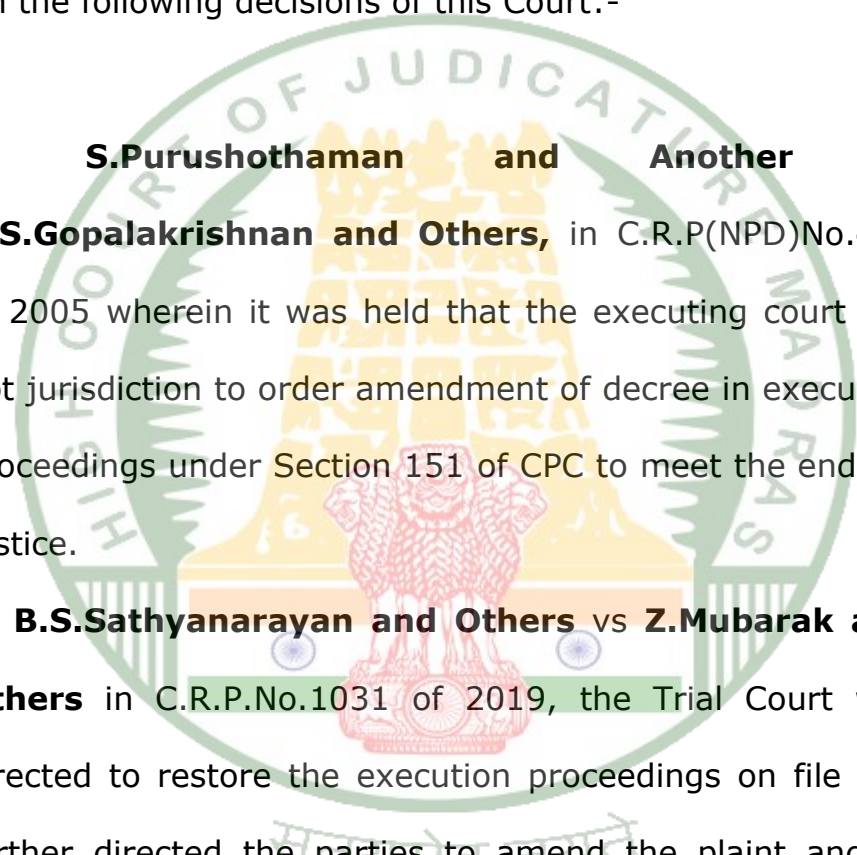
8.E.A.No.172 of 2012 in E.P.No.113 of 2005 in O.S.No.7 of 1999 was allowed by the Court. Aggrieved by the same, the petitioner/defendant has filed this Civil Revision Petition to set aside the order.

9.The learned counsel for the respondent/plaintiff submits that the petitioner has subsequently sold the property to a third party and has no interest in the property and therefore the present Civil Revision Petition filed is liable to dismissed.

10.The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Jang Singh vs Brij Lal and Others** AIR 1966 SC 1631 to state that only when a mistake is

committed by the Court, rectification can be ordered and not otherwise.

11.Per contra, the learned counsel for the respondent/plaintiff relied on the following decisions of this Court:-

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- i. In **S.Purushothaman and Another** vs **K.S.Gopalakrishnan and Others**, in C.R.P(NPD)No.448 of 2005 wherein it was held that the executing court has got jurisdiction to order amendment of decree in execution proceedings under Section 151 of CPC to meet the ends of justice.
- ii. In **B.S.Sathyanarayan and Others** vs **Z.Mubarak and Others** in C.R.P.No.1031 of 2019, the Trial Court was directed to restore the execution proceedings on file and further directed the parties to amend the plaint and to direct the Amin to execute the decree. The Court granted relief with the following observations:-

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.

12.I have considered the records and the case laws filed by the learned counsel for the petitioner/defendant and the learned counsel for the respondent/plaintiff.

13.This is a peculiar case where the dispute was earlier compromised on 21.12.1997 and a decree came to be passed on 23.02.1998 in O.S.No.209 of 1997. Thereafter, O.S.No.7 of 1999 came to be filed for the same relief.

14.In O.S.No.209 of 1997 the description of the property was correctly given as Survey No.51/5 in O.S.No.209 of 1997. However, in O.S.No.7 of 1999, the description was wrongly given as Survey No.51/6. The petitioner however remained absent therefore O.S.No.7 of 1999 was decreed exparte on 27.04.2001.

15.Thereafter the E.P.No.121 of 2004 was filed for execution of sale deed which was allowed exparte on 21.06.2005.

16. Thereafter, E.P.No.113 of 2005 was filed by the respondent/plaintiff for delivery of possession. Respondent/plaintiff filed E.A.No.172 of 2012 to amend the Survey number as Survey No.51/5 in the decree. At that stage of the proceedings, the petitioner/defendant objected. The Court after considering the records has allowed the petition on 18.11.2013. During the interregnum the respondent/plaintiff has also sold the property.

17. Thus, it is evident that the petitioner/defendant was sitting on the fence and watching the respondent /plaintiff to commit repeated mistakes and allowed creation of third party rights.

18. The two decisions cited by the learned counsel for the respondent/plaintiff have held the Execution Court has power to order amendment to meet end of justice.

19. Recently, in **R.Venkatachalam Vs Tmt.Kullammal (Died)** 2017 SCC OnLine Mad 15290, the Court observed that in a suit for specific performance, the decree is drafted based on the details found in the plaint schedule. If there is really any error in the description of the property, the decree holder ought to have pleaded before the Court which passed the decree as to how the error crept

and why it should be amended. The Court held that Amendment to decree is the judicial function of the court which has passed the decree. The decree holder cannot on his own alter the survey number, extent and seek enforcement of it, which is not only impermissible under law, but also illegal. Such an attempt made by the revision petitioner is nothing but a fraud on the Court

20. In **Niyamat Ali Molla vs Sonargon Housing Co-operative Society Ltd.**, [AIR 2008 SC 225], a suit was filed for declaration and possession of suit property. The suit was decreed. The decree was upheld by the Supreme Court. During the course of execution proceedings, the decree holder filed an application for amendment of plaint and the decree containing the Schedule of property. The Trial Court allowed the amendment. While confirming the judgment, the Supreme Court observed:-

"18. Section 152 of the Code of Civil Procedure empowers the Court to correct its own error in a judgment, decree or order from any accidental slip or omission. The principle behind the said provision is *actus curiae nemesis gravabit*, i.e., nobody shall be prejudiced by an act of court.

19. Code of Civil Procedure recognises the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the code but also inherent power in general. The courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so

as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the court is well recognized."

21. In **R.Srinivasan vs M.Thambusamy** [1996 (2) CTC 66], it was held that Section 152 of CPC can be invoked not only to correct clerical errors or arithmetical errors in the judgment and decrees but also at the time of Execution of the decree, when a decree has been obtained for a particular survey number. The court further held that as follows:

"Even assuming without admitting that the petition under Section 152, C.P.C. to correct the survey number may be technically objected to, in the interests of justice, the Court below should have ordered the application in its inherent powers, as the decree holder has obtained the decree after **full contest** cannot at all be deprived of the fruits of the decree on a technical reason."

22.This view was followed in **B.Dheenadayabaran vs RathnaVel** 2015 4LW 62.

23.In **Prathiba Singh vs Shanti Devi Prasad** AIR 2003 SC 643, the Court held that if there is an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by supplying the omission.

24.However, we are not concerned with the case of inadvertent mistake. The first suit namely O.S.No 209 of 1997 was compromised. Therefore, the second suit in O.S.No.07 of 1999 could not have been filed as it would have been barred under section 11 of the Civil Procedure Code. Further, the fact remains that the decree and the consequential sale deed was executed with the mistake in the survey number.

25.Therefore, even though the petitioner was absent and set ex parte, the said ex-parte decree for the property in a different survey number cannot bind the petitioner. Further, the ex parte decree is also not reasoned. The Court ought to have been cautious before allowing amendment to the decree as the decree was based on wrong description of the property in a suit for specific performance.

26.Further, the respondent defendant has sold the property during the interregnum to the prejudice of the petitioner and thereby has created a third party right. It is evident that the respondent has acted with alacrity to defeat the rights of the petitioner.

27.At the same time it cannot be ignored that the petitioner

was also equally guilty of not participating in the proceedings by choosing to remain absent. Therefore, the petitioner should be asked to pay cost while allowing the present Civil Revision Petition.

28. Therefore, considering the overall facts and circumstances of the case, I am of the view that to meet the ends of justice, the present Civil Revision Petition is liable to be allowed subject to payment of cost of Rs.15,000/- to be deposited to the credit of the suit.

29. This amount shall be deposited by the petitioner-defendant within a period of four weeks from the date of receipt of a copy of this order to the credit of the O.S.No.07 of 2009 before the Subordinate Court, Cuddalore. This shall be complied scrupulously without delay. On such deposit, the respondent-plaintiff shall be entitled to withdraw the amount.

30. On such deposit, the petitioner shall file a formal application to implead the third party purchaser of the property as the 2nd defendant in O.S.No. 7 of 2009. The third party purchaser may file an objection or in the alternative file a suit to recover the amount from the respondent.

31. On such deposit, it shall be the duty of the respondent/plaintiff to implead the alienee as a second defendant in the above suit. The respondent/plaintiff shall also amend the plaint schedule by giving the correct survey number without further application. The petitioner-defendant and the alienee shall thereafter file their written statements.

32. The I Additional Subordinate Court, Cuddalore shall thereafter proceed and pass a fresh order in E.A.No.172 of 2012 in E.P.No.113 of 2005 in O.S.No.7 of 1999 within a period of six months from the date of receipt of a copy of this order.

33. The present Civil Revision Petition is thus allowed with the above observations. Consequently, connected Miscellaneous Petition is also closed.

18.07.2019

Index :Yes/No
Internet :Yes/No

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To

1. The I Additional Subordinate Court,
Cuddalore.

2. The Subordinate Court,
Cuddalore.

C.SARAVANAN, J.

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3. Annalakshmi,
W/o. Samidurai,
No.56-A, Bagawathi Amman Koil Street,
Pappanthottam, Vilavanagar, Cuddalore.

4. The Section Officer,
V.R. Section, High Court, Madras.



Pre-delivery order in

C.R.P(NPD)No.1520 of 2014
and
M.P.No.1 of 2014

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