

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3228 of 2014 &
M.P.No.1 of 2014

1.K.Chandrasekaran
2.K.Suresh alias Swaminathan ... Petitioners

Vs.

C.J.Kalaiyamurthy ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order made in E.P.No.38 of 2013 in O.S.No.99 of 2006 dated 26.06.2014 passed by the learned Principal Sub Judge, Puducherry.

For Petitioners ... Mr.D.Rajasekar

For Respondent ... Mr.T.S.Baskaran

ORDER

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The instant civil revision petition has been filed challenging the order dated 26.06.2014 passed by the learned Principal Sub Judge, Puducherry in E.P.No.38 of 2013 in O.S.No.99 of 2006.

Brief facts leading to the filing of the instant revision:

2. The petitioners are the judgment debtors in the execution petition E.P.No.38 of 2013 filed by the respondent before the learned Principal Sub Judge, Puducherry under Order XXI Rule 35(i) and 3 of CPC to direct the petitioners to deliver possession of B schedule property, as per the Judgment and decree dated 17.09.2009 passed in O.S.No.99 of 2006.

3. A counter affidavit was filed by the petitioners in E.P.No.38 of 2013 stating that shop bearing Door No.204 forms part of the building bearing Door Nos.202 and 206 and they were one unit. According to the petitioners/judgments debtors, Door Nos.202 and 206 which belongs to them, is on the east, west and north of Door No.204 and roof of Door Nos.202 and 206 rest on the three walls of the shop bearing Door No.204 which was purchased by the respondent/decree holder from Mohammed Siddique Ali under sale deed dated 03.09.2001. It is the case of the petitioners that if the three sides walls are demolished, the entire roof in their property bearing Door Nos.202 & 206 would collapse.

4. The executing court by its order dated 26.06.2014, allowed the execution petition filed by the respondent/decreed holder under Order XXI Rule 35(i) and 3 of CPC and ordered delivery of possession to the respondent/decreed holder. Aggrieved by the order dated 26.06.2014 passed in E.P. No. 38 of 2013, the instant civil revision petition has been filed under Section 115 of the Code of Civil Procedure.

Submissions of the learned counsels:

5. Heard Mr.D.Rajasekar, learned counsel for the petitioners and Mr.T.S.Baskaran, learned counsel for the respondent.

6. The learned counsel for the petitioners submitted that the petitioners are the owners of Door Nos.202 and 206 which is a part of the suit A schedule property. According to him, Door Nos.202 and 206 is on the east, west and north of Door No.204 and the roof of Door Nos.202 and 206 rest on the three walls of the shop bearing Door No.204 which has been purchased by the respondent/decreed holder and which is the suit B schedule property as per the Judgment and decree obtained by the respondent/decreed holder in O.S.No.99 of 2006.

7. The learned counsel for the petitioners also drew the attention of this Court to the judgment and decree passed in the suit filed by the petitioners against the respondent in O.S.No.75 of 2002, wherein permanent injunction was granted in favour of the petitioners/Judgment debtors restraining the respondent from claiming entire right over all the three walls which are situated in the B schedule property as boundaries prevail over the description of the measurement and at the same time, the petitioners/Judgment debtors were also not entitled to disturb the peaceful possession and enjoyment of B schedule property by the respondent/decree holder.

8. The learned counsel for the petitioners also drew the attention of this Court to the appeal filed by the respondent/decree holder in A.S.No.53 of 2003, aggrieved by the judgment and decree dated 29.08.2003 passed in O.S.No.75 of 2003. The learned counsel for the petitioners further submitted that even though in the appeal, the judgment and decree dated 29.08.2003 passed in O.S.No.75 of 2002 was modified, however, according to the learned counsel for the petitioners,

the respondent/decreed holder was entitled to possess and enjoy the B schedule property inclusive of three walls with an extent of 179 sq.ft exclusively to his convenience without any detriment to the rest of 'A' schedule property which is admittedly the property of the petitioners/judgment debtors.

9. The learned counsel for the petitioners concludes his submissions by submitting that the respondent/decreed holder are not entitled to demolish the three walls and if demolished, the entire roof of the petitioner's property would also get collapsed.

10. Per contra, learned counsel for the respondent /decreed holder drew the attention of this Court to the Judgment and decree dated 05.02.2009 passed in A.S.No.53 of 2003 and submitted that the judgment and decree dated 29.08.2003 passed in favour of the petitioners in O.S.No.75 of 2002 was set aside by the Appellate Court and therefore, the petitioners cannot rely upon the said judgment and decree of the Trial Court.

11. The learned counsel for the respondent also drew the attention of this Court to the judgment dated 05.02.2009 passed in A.S.No.53 of 2003 and in particular, he referred to paragraph 33 of the said judgment and submitted that there is a clear finding given by the Appellate Court under the said Judgment that the respondent/decreed holder is the absolute owner of 180 sq.ft of land in Door No.204 and further, the subject three walls also belong exclusively to the respondent/decreed holder as the same was owned earlier by the respondent/decreed holder vendors who are none else the close relatives of the petitioners/judgment debtors.

12. The learned counsel for the respondent also submitted that an Advocate Commissioner was appointed earlier and he had also filed his report and the report clearly demarcated the properties of the petitioners/judgment debtors as well as the properties of the respondent/decreed holder which is the suit B schedule property as per the plaint filed in O.S.No.99 of 2006.

Discussion:

13. It is evident that the judgment and decree dated 29.08.2003 passed in favour of the petitioners/judgment debtors in O.S.No.75 of 2002 was set aside by the Appellate Court in A.S.No.53 of 2003 on 05.02.2009. The relevant portion of the Judgment of the Appellate Court reads as follows:

“46. POINT NO.2: In the result, the Appeal is allowed with costs. The Judgment and Decree dated 29.08.2003, passed in O.S.No.75/2002 by the Learned Principal Sub Judge, Puducherry are set aside. The suit in O.S.No.75/2002 on the file of P.S.J., Puducherry is dismissed with costs. The appellant/defendant is entitled to possess and enjoy 'B' schedule property inclusive of three sides walls with an extent of 179 square feet exclusively to his convenient without any detriment to the rest of 'A' schedule property which is admittedly the property of the plaintiffs.”

The Appellate Court has made it very clear that the relief granted earlier by the Trial Court has been disallowed and the respondent/decreed holder is entitled to possess and enjoy B schedule property inclusive of three

sides walls with an extent of 179 sq.ft exclusively to his convenience without any detriment to the rest of 'A' schedule property which is admittedly the property of the petitioners/judgment debtors. As against the Judgment of the Appellate Court, admittedly no further appeal has been filed by either of the parties and therefore, the judgment and decree passed in A.S.No.53 of 2003 in favour of the respondent/decree holder has attained finality. As seen from the judgment of the Appellate Court, it has been made clear that the three sides walls exclusively belongs to the respondent/decree holder.

14. The only objection raised by the petitioners/Judgment debtors in the execution petition viz., E.P.No.38 of 2013 filed by the respondent/decree holder against the petitioners is that the three sides walls, if demolished, will collapse the roof of the petitioners' properties who are owning Door Nos. 202 and 206 whereas the respondent/decree holder is the owner of the shop Door No.204. This issue has already been adjudicated, as seen from the judgment and decree dated 05.02.2009 passed in A.S.No.53 of 2003 wherein it has been held that the walls exclusively belong to the respondent/decree holder. The only restriction

imposed on the respondent/decreed holder is that it should not inconvenience the petitioners/Judgment debtors in respect of their portions viz., Door nos.202 and 204.

15. This Court has perused and examined the impugned order and does not find any infirmity in the same. The executing court has rightly allowed the application filed by the respondent/decreed holder under Order XXI Rule 35(i) and 3 of CPC.

Conclusion:

16. In the result, the instant civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes/No

Speaking/Non-Speaking orders

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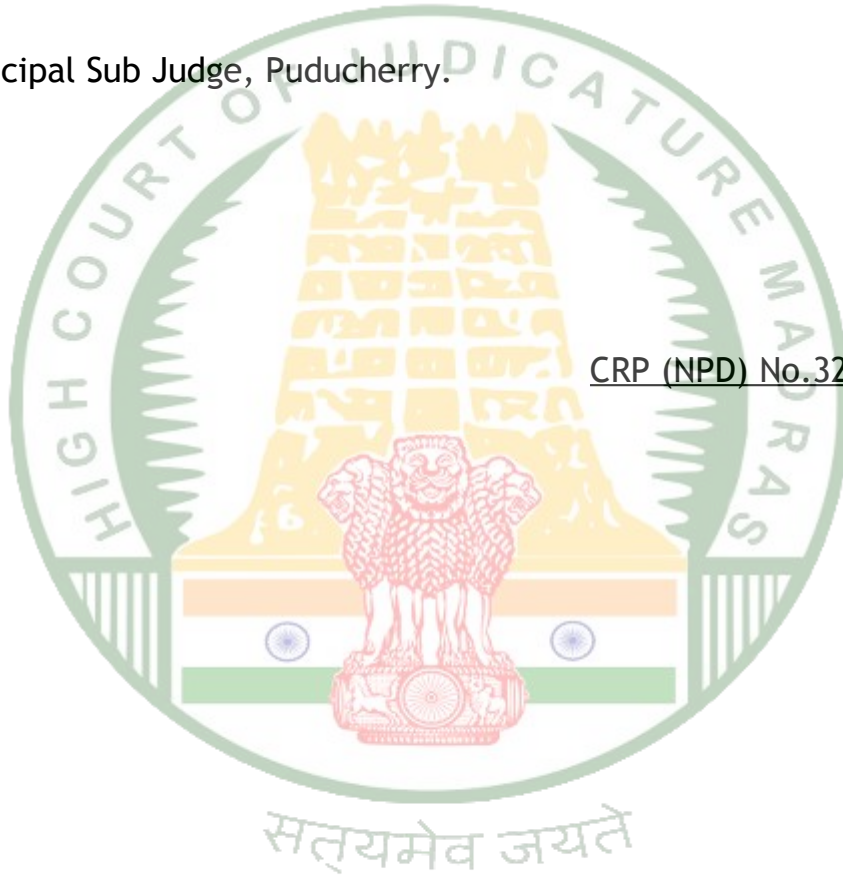
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ABDUL QUDDHOSE. J.,

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To

The Principal Sub Judge, Puducherry.



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