

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD)No.4605 of 2014
and M.P.No.1 of 2014

Subramaniyam

...Petitioner

vs.

1.Kannaian (Died)

2.K.Vasantha

3.K.Murugan

4.K.Velu

5.R.Dhanalakshmi

6.R.Thenmozhi

7.S.K.Subramanyam

8.Saroja

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 19.08.2014, made in E.P.No.38/2007 in O.S.No.592/1986 on the file of the Principal District Munsif at Chidambaram.

For Petitioner : Mr.Srinath Sridevan

For Respondents : Mr.N.Mariappan for R2, R4 to R6
R1, R7 and R8 - Died

ORDER

The instant Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure challenging the order dated 19.08.2014, passed by the learned Principal District Munsif, Chidambaram in E.P.No.38 of 2007 in O.S.No.592 of 1986.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the judgment debtor in E.P.No.38 of 2007 on the file of the learned Principal District Munsif, Chidambaram and he is the defendant in the suit O.S.No.592 of 1986. The suit was filed by Kannaian against the petitioner for a declaration and injunction in respect of 1½ cents pathway comprised in S.No.212/1B, which is the suit schedule property. The said suit was decreed in favour of Kannaian which was taken up on appeal by the petitioner and the said appeal was allowed and thereafter, Kannaian preferred a Second Appeal in S.A.No.1030 of 1994 which came to be allowed in favour of Kannaian on 21.03.2006. Therefore, the judgment and decree dated 21.03.2006 passed in the easement suit O.S.No.592 of 1986 was confirmed by this Court in S.A.No.1030 of 1994 and therefore, the said decree has attained finality.

3.Kannaian filed E.P.No.30 of 2007 to execute the judgment

and decree passed against the petitioner in O.S.No.592 of 1986.

The execution petition was filed under Order 21 Rule 35 CPC to deliver the property as per the decree of (easementary rights) granted in favour of Kannaian. During the pendency of the execution petition Kannaian died and the respondents 2 to 6 were brought on record as the legal representatives of Kannaian.

4.By order dated 19.08.2014, E.P.No.38 of 2007 was ordered as prayed for by the respondents 2 to 6.

5.Aggrieved by the order dated 19.08.2014, the instant Civil Revision Petition has been filed by the petitioner, who is the judgment debtor.

6.Heard Mr.Srinath Sridevan, learned counsel for the petitioner and Mr.N.Mariappan, learned counsel for the respondents 2 & 4 to 6.

7.The only ground raised by the learned counsel for the petitioner is that the application under Order 21 Rule 35 of CPC is not maintainable, as it relates to cases where delivery of possession is sought for. According to him, as per the judgment and decree passed in favour of Kannaian, the decree granted is only for easementary rights. But, however, executing Court has entertained

the application and has granted delivery of possession in respect of suit schedule property in favour of the respondents 2 to 6.

8.Per contra, the learned counsel for the respondents, drew the attention of this Court, to the operative portion of the impugned order and according to him, it is very clear as seen from the operative portion that the execution petition has been allowed only to execute the easementary rights for the usage of the pathway by the respondent/decreed holder as per the judgment and decree passed in O.S.No.592 of 1986.

9.According to him, even though a wrong provision of law was quoted in the execution petition, the relief granted by the executing Court is only in accordance with the judgment and decree passed in favour of Kannian.

10.Admittedly, the judgment and decree passed in O.S.No.592 of 1986 has attained finality by the allowing of the Second Appeal filed by Kannaian in S.A.No.1030 of 1994. The Application under Order 21 Rule 35 CPC has been filed by the respondents, seeking for delivery of property as per the decree only for easementary rights. They have not sought for delivery of possession for the purpose of enjoying the pathway absolutely. The

operative portion of the impugned order has also made it clear that the respondents are allowed delivery of the property only for the purpose of easementary rights that has been granted to them under the judgment and decree passed in their favour.

11.It is settled law that quoting of wrong provision of law by the respondents will not disallow the respondents to execute the decree passed in O.S.No.592 of 1986.

12.Therefore, this Court does not find any infirmity in the order passed by the executing Court, which is the subject matter of challenge in this revision. However, it is made clear that the respondents 2 to 6 are entitled to execute only in accordance with the judgment and decree passed in O.S.No.592 of 1986.

13.Accordingly, the Civil Revision Petition shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

24.07.2019

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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ABDUL QUDDHOSE, J.

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To

The Principal District Munsif at Chidambaram.



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