

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3299 of 2019

and

C.M.P. No. 21420 of 2019

1. S. Dallas

2. S. Pappa

S. Dayala Mary (died)

3. S. Vimala

4. Allen David

... Petitioners

-Vs-

A. S. Rani Clementia

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India to declare the petition and docket order dated 09.09.2019 passed in E.P. No. 147 of 2015 in O.S. No. 220 of 2009 by the learned Subordinate Judge at Tambaram is null and void.

For Petitioners

: Mr. B. Narayanan

For Respondent

: Mr. A.R. Nixon

ORDER

This Civil Revision Petition has been filed against the order passed in E.P. No. 147 of 2015 in O.S. No. 220 of 2009 by the learned Subordinate Judge at Tambaram, by order dated 09.09.2019.

2. In the said order, the plea raised on behalf of the revision petitioners to engage a Surveyor from Survey Department to measure the suit property and to identify the property, against which, the warrant of delivery of possession has to be executed by the Amina, has been rejected, therefore, aggrieved over the same, the present revision petition has been filed.

3. Heard Mr. B. Narayanan, learned counsel appearing for the revision petitioners and Mr. A.R. Nixon, learned counsel appearing for the respondent.

4. The respondent herein is the plaintiff / decree holder, in whose favour decree was passed in O.S. No. 220 of 2009, as against which, the matter has gone up to the Hon'ble Supreme Court and the

decree passed by the trial Court since has been confirmed, therefore, the respondent / decree holder has filed the aforesaid E.P. No. 147 of 2015 for execution of the decree.

5. In that EP, objection was raised by the present revision petitioners, who are the judgment debtors stating that, there has been a vast area of property more than 4000 sq.ft., which land had been given as settlement to the father of the revision petitioners long back and subsequently so many developments taken place and therefore, if at all the decree in respect of the suit property, which is nothing but for an area of 800 sq.ft., only, therefore without identifying the 800 sq.ft., suit property, if the decree is executed with the help of the counsel for the parties as well as the Amina, then it will be a wrong execution and only in that context, it was opposed by the judgment debtors in the said EP, thereby raising a point and made a request before the Execution Court to appoint Surveyor from the Settlement Department, in order to assist the Amina as well as the counsel from both sides to measure and identify the suit property enabling the Amina to execute the warrant only in respect of the correct suit property with proper boundaries on

four sides and since that attempt genuinely made by the revision petitioners has been negated, by virtue of the impugned order, the revision petitioners are before this Court. Therefore, the learned counsel seeks indulgence in this revision against the said order.

6. However, Mr. A.R. Nixon, learned counsel appearing for the respondent on the other hand would submit that, the property has already been identified pursuant to the decree passed by the trial Court, having been confirmed up to the Hon'ble Supreme Court, pursuant to which, EP was filed, where already delivery of possession was ordered. Therefore, only delivery has to be taken, for the said purpose, Amina was directed to take delivery in the presence of the counsel for the parties.

7. The learned counsel would further submit that, already the revision petitioners had given solemn undertaking before the Court of Law that they would hand over the vacant possession of the suit property without any hesitation and after having given such undertaking before the Court of Law, they cannot go back, more over, it

is not the case that, it is an inexecutable decree as the decree having been confirmed up to the highest Court of Law. At this stage, that too at the stage of the delivery of possession of the suit property, the petitioners made this attempt only to defeat the execution of the decree in full to enjoy the fruits of the decree by the decree holder / respondent and therefore, the present attempt, since has been rightly considered in proper perspective and rejected by the Execution Court, requires no interference from this Court in this revision.

8. I have considered the said submission made by both sides and perused the materials placed before this Court.

9. In fact, when the case came up for last hearing on 03.10.2019, after hearing both sides at considerable length and at one point of time, the learned counsel for the revision petitioners submitted that, in so far as the entire property to an extent of 4554 sq.ft., which includes the suit property of 800 sq.ft., there had been a patta issued by the Settlement Department long back to the father of the petitioners, and based on such submissions and the stand taken by the revision

petitioners, this Court by order dated 03.10.2019 passed the following order:-

"It is the claim of the revision petitioner that in respect of the property situated in S.No.40, Door No.92/50, Maagaliyamman Kovil Street, St.Thomas Mount, Chennai, to the extent of 4554 Sq.ft, settlement patta was given by the Government in favour of the father of the revision petitioner either individually or joint patta with some other owner. Hence, the learned counsel for the petitioner wants to produce the original patta copy before this court to proceed further in the revision. For the said purpose, he seeks short accommodation.

2. Post the matter on 15.10.2019. In the meanwhile status quo as on today shall be maintained, with regard to the delivery of possession of the property in question."

and that is how the matter has came up for hearing and disposal today.

10. At the outset, this Court wants to point out that, as has been claimed by the learned counsel appearing for the revision petitioners, they have not come forward to file any document to show that the settlement patta has been given in favour of the father of the petitioners for the entire extent of 4554 sq.ft., which includes the suit property of 800 sq.ft.

11. Though it was made by the learned counsel for the revision petitioners that, subsequently patta has been tampered, assuming that the patta has subsequently been tampered by any third party and a new patta was issued in any body's favour, that will not preclude the petitioners to produce their documents to show that, they are assignees of the patta land by the Settlement Department long back.

12. Since the petitioners are not in a position to produce those documents, there is no *prima facie*, even for arguments sake, to accept the plea raised by the revision petitioners before this Court at this juncture.

13. Moreover, in the EP proceedings, delivery has already been ordered, only taking of delivery has to be taken place and for the said purpose, even though at one point of time, Amina concerned of the Execution Court seems to have raised a point that, properties could not be identified, subsequently it seems that, the said bailiff had been examined by the Court and this has been recorded in the impugned order dated 09.09.2019 stating that, senior bailiff has been present and

examined as CW1 and CW2. Even though, the Amina requires the help of the Surveyor to identify the suit property, which was negated by the learned Judge of the Execution Court, on the ground that, already the counsel and the party identified the property, therefore it does not requires any Surveyor from Survey Department and therefore, the Execution Court has come to the conclusion that, the warrant can be executed by making delivery of the possession of the property in question to and in favour of the respondent / decree holder.

14. Having gone through all these factors and taking into account, the checkered history involved in this case, where the case had gone up to the Hon'ble Supreme Court, where it was settled and the Execution Proceedings also filed long back, already delivery of possession was ordered and only to take delivery of the suit property, since the present issue has been raised by the revision petitioners and the same also has been resolved by the order impugned by the Execution Court and there is no clinching material available before this Court, even at this juncture, to interfere with the said view taken by the trial Court in the impugned order dated 09.09.2019, as

admittedly, the revision petitioners had not been in a position to produce the alleged patta issued by the Settlement Department long back to and in favour of the father of the petitioners, this Court has no hesitation to hold that, the impugned order does not require any interference from this Court by way of revision.

15. It is noteworthy to mention that, though the Police Protection has already been ordered to assist Amina to take delivery of the possession of the suit property by complete execution of the decree, it seems, as has been claimed by the learned counsel for the respondent / decree holder that, the Police people has not been co-operating with the Court Staff.

16. In view of the above, there shall be a direction to the Inspector of Police, S1 Police Station, Alandur, Chennai to render all necessary assistance to execute the warrant.

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R. SURESH KUMAR, J.

vji / kmm

17. In that view of the matter, this revision petition is not entertainable, accordingly it fails and hence it is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

16.10.2019

Index: Yes / No
Speaking order / Non speaking order

vji / kmm

Note: Issue order copy by 24.10.2019.

To

The learned Subordinate Judge,
Tambaram.

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