



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.3252 of 2019
and C.M.P.No.21148 of 2019

D.Sasikumar

... Petitioner

-Vs-

1. M/s.Masjid E Makkahpur and
Madrassa E Bilal Wakf Committee
represented by President / Mutawalli
Mohammed Amjed Hussain
No.1, Makkahpur First Street
Lloyds Road, Avvai Shanmugam
Triplicane, Chennai 600 005.

2. D.S.Dayalan

...Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 04.09.2019 passed by the learned IX Assistant City Civil Court, Chennai, rejecting the application filed in E.A.No.3 of 2019 in E.P.No.1819 of 2019.

For Petitioners : Mr.R.Dhanasekar

O R D E R

This revision petition has been filed against the fair and decreetal order dated 04.09.2019 passed by the learned IX Assistant City Civil Court, Chennai, rejecting the application filed in E.A.No.3 of 2019 in E.P.No.1819 of 2019.

2. Before the Execution Court, the revision petitioner, who is a third party, filed the said E.A., to declare the decree as nullity, by filing the said petition under Order XXI Rule 97 and 101 CPC. The said application was dismissed by the order dated 04.09.2019 by the Execution Court, as against which the present revision has been filed.

3. I have heard Mr.Dhanasekar, learned counsel for the petitioner, who would submit that though there has been a decree in favour of the decree holder, the petitioner being a third party, has purchased the property from the judgment debtor and



the judgment debtor alone is entitled to meddle with the property in question, for which the plaintiff / decree holder does not have any right and therefore, that issue has to be decided not by way of a suit, but only by the Execution Court and that is why the petitioner has invoked Rule 97 and 101 of Order XXI of CPC and filed the said application, and the Execution Court, without properly appreciating the facts, dismissed the same, and therefore, the impugned order has to be interfered with.

4. I have considered the submissions made by the learned counsel for the petitioner, who was a third party before the Execution Court and also perused the materials placed before this Court.

5. Admittedly, the first respondent / decree holder filed a suit in O.S.No.5342 of 2014 before the I Assistant City Civil Court, Chennai for recovery of possession of the suit property and the said suit was decreed by the trial Court by a judgment and decree dated 18.09.2017, as against which the second respondent / judgment debtor filed first appeal in A.S.No.187 of 2018 before the XVI Additional City Civil Court, Chennai and the same was also dismissed by the judgment dated 05.04.2019, thereby confirming the judgment and decree of the trial Court.

6. Aggrieved over the same, the second respondent / judgment debtor filed Second Appeal in S.A.No.711 of 2019 before this Court, which was decided by the learned Judge of this Court on 05.07.2019, whereby the learned Judge has dismissed the Second Appeal also.

7. In the judgment dated 05.07.2019, the learned Judge, after having appreciated the cogent evidence by the parties, especially the first respondent / plaintiff before the trial Court and the consistent findings of the trial Court as well as the first appellate Court, found no infirmity in the judgment and decree of the trial Court as well as first appellate Court and ultimately confirmed that the plaintiff / decree holder was the owner of the property, where the second respondent ie., the defendant / judgment debtor had been only a tenant and he has altered the super structure and therefore on that ground, the suit was decreed and therefore, the said decree having been confirmed by the first appellate Court, was again confirmed by this Court in the said Second Appeal.

8. Only in that circumstances, the third party revision petitioner filed the said E.A.No.3 of 2019, stating that, the decree is a nullity. When there has been concurrent findings by the trial court, first appellate Court as well as this Court, where the Second Appeal also has been dismissed by the judgment



dated 05.07.2019, the said decree has become final and therefore, it is fully executable and in that context, the present E.A., filed by the revision petitioner, that too a third party, making so many claims is completely unjustifiable and therefore, absolutely there is no infirmity in rejecting the said application filed by the petitioner by the Execution Court, through the impugned order dated 04.09.2019.

9. In that view of the matter, this Court feels that no interference is required in the impugned order. In result, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KST

To

The IX Assistant Judge, City Civil Court, Chennai.

+1 CC to Mr.R.Dhanasekar, Advocate sr 83432.

C.R.P.(PD) No.3252 of 2019

GMR(CO)
SP(07/01/2020)