



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.1028 of 2019
and

C.M.P (MD) No.5664 of 2019

1. Joseph

2. John

3. Jose

.. Petitioners/ Defendants 1, 4 & 5

Vs.

1. Adlin Sarmila

.. 1st Respondent / Plaintiff

2. Cicili

3. Christudhas

.. Respondents 1 & 2 / Defendants 2 & 3

4. Chellammal

.. 4th Respondent / Third Party

PRAYER: Civil Revision Petition is filed under Section 115 C.P.C. against the fair and decretal order dated 25.01.2018 made in E.A.No.196 of 2017 in E.P.No.21 of 2002 in O.S.No.99 of 1998 by the Principal District Munsif Court, Kuzhithurai.

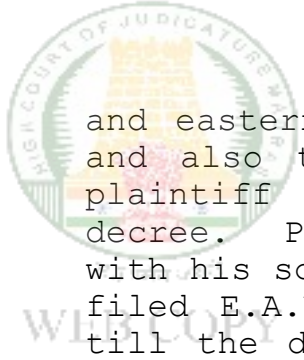
For petitioners : Mr.R.Nandakumar

For Respondent No.1 : Mr.C.K.M.Appaji

ORDER

Against the dismissal of the petition seeking stay of the execution petition till the disposal of the suit filed in O.S.No.30 of 2016, this revision has been filed.

2. The first respondent / plaintiff filed O.S.No.99 of 1998 seeking to demarcate suit 'B' schedule property and alternatively for the reliefs of partition and separate possession of her share of 30 cents of land and trees over suit 'A' schedule property, on the ground that she purchased the suit 'B' schedule property from one Chellamma, who is the mother of the defendants 1 and 2, vide sale deed dated 26.05.1997. In the suit, an ex-parte decree was passed to the effect that to demarcate the boundaries of northern, southern



and eastern sides of the suit 'B' schedule property through Court and also to construct a compound wall. The first respondent / plaintiff filed E.P.No.21 of 2002 seeking to execute the said decree. Pending the same, the 1st petitioner / 1st defendant along with his sons, namely, petitioners 2 and 3 / defendants 4 and 5, has filed E.A.No.196 of 2017, seeking to stay the execution petition till the disposal of the suit in O.S.No.30 of 2016, filed by the daughter of the 1st petitioner / 1st defendant before the Sub Court, Kuzhithurai, seeking to declare that the Judgment and decree passed in O.S.No.99 of 1998 is void and invalid and it will not bind her and also for the relief of partition, based on the Will alleged to have been executed by Chellammal. The Court below has dismissed the same, against which, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioners / defendants 1, 4 and 5 would submit that the daughter of the 1st petitioner / 1st defendant immediately after passing the ex-parte decree in O.S.No.99 of 1998, filed a suit in O.S.No.30 of 2016, seeking to declare that the Judgment and decree passed in O.S.No.99/1998 is void and invalid and in both the suits, the petitioners are parties. The 1st respondent / plaintiff suppressing the same, has filed the execution petition. Therefore, the petitioners / defendants 1, 4 and 5 have filed the present petition to stay the execution proceedings. But, the Court below has erroneously dismissed the petition. Thus, he prayed to set aside the order passed by the Court below.

4.The learned counsel appearing for the 1st respondent / plaintiff would submit that the 1st respondent / plaintiff filed the suit on the ground that she purchased the suit 'B' schedule property from one Chellamma, who is the mother of the defendants 1 and 2, vide sale deed dated 26.05.1997. The suit was decreed on 09.06.2000. The present suit filed by the daughter of the 1st petitioner / 1st defendant is of the year 2016 and she is not a party to the suit in O.S.No.99 of 1998. The petitioners only to drag on the proceedings, have filed the present application colluding with the daughter of the 1st petitioner. Thus, he prayed to dismiss the revision.

5.Heard the learned counsel for the parties and perused the records carefully.

6.The revision petitioners / defendants 1, 4 and 5 filed E.A.No.196 of 2017 seeking to stay the execution proceedings till the disposal of O.S.No.30 of 2016, filed by the daughter of the 1st petitioner / 1st defendant, claiming right over the portion of the disputed property, based on the alleged Will. Perusal of records shows that the first respondent / plaintiff has filed the suit in the year 1998 and it has been decreed in the year 2000 and the execution petition has been filed in the year 2002 and till date, the first respondent / plaintiff is not able to enjoy the fruits of

the decree, which has been passed in the year 2000. A reading of Order XXI, Rule 29 of CPC states as follows:

"Stay of execution pending suit between decree-holder and judgment-debtor.— Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing".

7. From the reading of the above provision, it is clear that the party in whose favour, the decree has been made, is not a party to the pending suit and the party who has filed the subsequent suit, is a third party, who is not a party in O.S.No.99 of 1998. The subsequent suit has been filed by the daughter of the 1st petitioner / 1st defendant and though the decree has been passed in the year 2000, it cannot be pleaded that the daughter of the 1st petitioner / 1st defendant was not aware of the suit in O.S.No.99 of 1998. Therefore, in my considered opinion, the above execution application has been filed by the daughter of the 1st petitioner / 1st defendant colluding with the 1st petitioner / 1st defendant only to protract the proceedings and therefore, the learned Judge, has rightly dismissed the petition and the interference of this Court is not necessary. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal District Munsif,
Kuzhithurai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.C.K.M.APPAJI, Advocate (SR-72402[F] dated 01/07/2019)

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-72655[F] dated 02/07/2019)

ORDER MADE IN
C.R.P (MD) No.1028 of 2019
01.07.2019