

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.395 of 2012
and M.P.No.1 of 2012

Pushpavathi (died)

- 1.P.Janabai
- 2.V.Nirmala
- 3.P.Ramesh Kumar
- 4.P.Baskaran

..Petitioners/Decree holders
/Lrs of Deceased Pushpavathi/Plaintiffs

Vs

- 1.Krishnaveni
 - 2.Deenadayalan
 3. R.Valliappan (died)
 - 3.Neela
 - 4.Murali Mohan
 - 5.Baskar
 - 6.Vijayakumar
 - 7.Rubalingam
 - 8.Chandrasekaran
 - 9.Shyamala
 - 10.Shanthi
 - 11.Punithavathy
 - 12.Minor.Vijayalakshmi
- D/o.Late R.Valliappan

..Respondents/Judgment Debtors/
Defendants
/LRs of deceased R.Valliappan.

Prayer: Civil Revision Petition filed under Section 115 of CPC against the fair and decreetal order dated 09.09.2011 passed in E.P.No.143 of 2008 in O.S.No.58 of 1997 on the file of District Munsif Court, at Ambattur.

For Petitioners : Mr.V.Manohar

For respondents : Mr.S.Krishnaveni for R1
R2 to R12 - Notice served. No appearance.

ORDER

The deceased plaintiff Pushpavathi filed suit against respondents 1 to 3 herein in O.S.No.58 of 1997 on the file of the District Munsif, Ambattur. In the said suit, preliminary decree was passed on 28.03.2000. Challenging the said preliminary decree and judgment, the respondents filed appeal before Additional District and Sessions Judge, Fast Track Court-III, Poonamallee, in A.S.No.41 of 2000. The Appellate Court, after hearing the arguments, dismissed the appeal. Subsequently, the deceased plaintiff filed application in I.A.No.4 of 2007 before District Munsif Court cum Judicial Magistrate, Ambattur, for passing of the final decree. The learned District Munsif cum Judicial Magistrate, passed the final decree on 21.02.2008 and there was no appeal against the final decree and thereafter, the plaintiff/decreed holder filed Execution Petition in E.P.143 of 2008 on the file of District Munsif,

Ambattur. The Executing Court dismissed the said execution petition. Challenging the same, the petitioners who are the legal representatives of the deceased plaintiff are before this court.

2. (a) The learned counsel for the petitioners would submit that the Executing Court traversed beyond the preliminary decree and dismissed the Execution Petition on the ground that the court which passed the decree has no jurisdiction, therefore, the decree passed is nullity and therefore, it cannot be executed. The Executing Court dismissed the Execution petition on yet another ground that the Commissioner appointed in the final decree proceedings acted beyond the scope of the execution of the commission warrant and the directions and therefore, the final decree passed by the trial court is not in consonance with the preliminary decree. Therefore, the Execution Court dismissed the application filed by the petitioners.

(b) The learned counsel for the petitioners would submit that as far as territorial jurisdiction is concerned, the party has to object the jurisdiction at the earliest point of time; after passing of the preliminary decree, the respondents cannot raise such a territorial jurisdiction of the court which passed the decree. Further, the respondents filed appeal against the

preliminary decree in A.S.No.41 of 2000. The Appellate Court dismissed the Appeal Suit and confirmed the preliminary decree. Thereafter, the petitioners filed a petition in I.A.No.4 of 2007 for passing of the final decree and also the trial court passed the final decree on 21.02.2008 after considering the objections and contentions raised. The District Munsif cum Judicial Magistrate, Ambattur, after rejecting the objection raised by the respondents regarding the territorial jurisdiction, passed the final decree.

(c) It is contended that the respondents have not challenged the appellate court judgment wherein, preliminary decree has been confirmed in appeal. Therefore, the judgment passed by the appellate court in A.S.No.41 of 2000 regarding the preliminary decree is final. Further the respondents have not challenged the final decree. Thus the final decree passed by the trial court has also become final. So once the respondents have not challenged the final decree, now after filing execution petition before the Executing Court, they cannot raise such an objection regarding territorial jurisdiction in respect of passing of final decree by the trial court. Further, without challenging the final decree passed by the trial court, in the executing court, the respondents cannot say that the trial court has passed the final decree without looking into and appreciating the warrant of Commission issued and preliminary decree

passed. Therefore, the executing court failed to consider the legal proposition set out in this aspect and as such, the executing court traversed beyond the decree. All the citations relied on by the Executing Court is not applicable to the present case on hand and the Executing Court failed to appreciate either the factual position or legal proposition and hence, the order passed by the Executing Court is liable to be set aside.

3. The learned counsel for the first respondent would submit that the court which passed the decree has no jurisdiction and therefore, since the decree passed, is without jurisdiction, the decree is nullity and the Commissioner has not executed the warrant issued by the trial court in the final decree application in consonance with the preliminary decree, but traversed beyond the warrant issued and therefore, the Executing court had rightly dismissed the Execution Petition and therefore, it need not be interfered with.

4. Heard both sides and perused the records.

5. Admittedly, the deceased plaintiff, whose legal heirs are petitioners herein, filed the suit for partition against the respondents in O.S.No.58 of 1997 on the file of District Munsif, Ambattur. In the said suit, preliminary

decree was passed on 28.03.2000. The respondents challenged the said preliminary decree before the Appellate Court/Additional District and Sessions Judge, Fast Track Court, Poonamallee, in A.S.No.41 of 2000. The Appellate Court dismissed the appeal and confirmed the preliminary decree passed by the trial court and against which, the respondents had not filed any second appeal or not challenged the preliminary decree by way of further appeal. Therefore, the preliminary decree passed by the trial court is final.

6. Subsequently, the petitioner filed application in I.A.No.4 of 2007 in O.S.No.58 of 1997 for passing of final decree. The trial court on 21.02.2008, passed the final decree and the respondents had not challenged the said final decree passed in I.A.No.4 of 2007 in O.S.No.58 of 1997 and therefore, the final decree passed by the trial court has also been not challenged and become final. Therefore, the petitioners subsequently filed application for execution of decree in E.P.No.143 of 2008 on the file of District Munsif, Ambattur. The Executing Court, after enquiry, dismissed the E.P., on two grounds. One is the decree passed is nullity on the ground that the trial court which passed the decree is without jurisdiction and therefore, it is not executable and decree is nullity and the second one is the Commissioner exercised his jurisdiction beyond the scope of the warrant issued by the trial

court and final decree is not in consonance with the preliminary decree. Therefore, the decree cannot be executed, therefore, the Execution Petition has been dismissed.

7. It is seen from the records that the deceased Plaintiff Pushpavathi filed suit for partition and separate possession. The Revision Petitioners herein are her legal heirs. In the suit, four issues were framed and one additional issue was framed at the time of trial. But no issue was framed regarding territorial jurisdiction or local limits of the jurisdiction as to whether the trial court has got the jurisdiction to try the suit. There was no occasion to decide the jurisdiction issue by the trial court.

8. As per Section 21 of C.P.C., objection has to be taken at the earliest point of time before settling the issue but not later regarding pecuniary or territorial jurisdiction. Therefore, the objection regarding territorial jurisdiction has to be raised before settling the issues before the trial court and not thereafter.

9. Admittedly, in this case, no issues were framed raising jurisdiction point. It means the respondents have not raised any objection regarding the

jurisdiction before passing of the preliminary decree. Even, when the respondents challenged the preliminary decree before the appellate court in A.S.No.41 of 2000 on the file of the Additional District Sessions Judge, Fast Track Court-III, Poonamallee, they have not raised any objection regarding jurisdiction point. Thus, no grounds in the appeal has been raised regarding territorial jurisdiction.

10. On reading of both preliminary decree passed by the trial court and the judgment and decree passed by the Appellate Court, it is apparent that the respondents had not raised objections regarding the jurisdiction and only in the final decree proceedings, they have raised that objection. The trial court also answered that objection, by pointing out that jurisdiction issue ought to have been raised before settling the issues and not after passing of the preliminary decree and therefore, the said contention was rejected. Even regarding the Commissioner's report, the objection raised was considered and subsequently, it was rejected and final decree was passed.

11. Admittedly, the respondents neither challenged the same before the appellate court regarding jurisdiction of the trial court nor they have challenged the final decree passed in I.A.No.4 of 2007 by way of filing

appeal. Therefore, the judgment of the preliminary decree and final decree have not been challenged by either of the parties. After filing the Execution Petition, the respondents have filed the counter, raising objection regarding the local limits of the territorial jurisdiction which passed the decree and also regarding the Commissioner's report and also questioning the final decree, stating that it is not in consonance with the preliminary decree.

12. The respondents in their counter filed before the District Munsif, Ambattur, in E.P.No.143 of 2008, in paragraph 2, has submitted that the schedule mentioned property in S.No.93/1A3B and 93/1A4 of Puthagaram Village, Ambathur Taluk, Tiruvellore District, is one of the villages comprised in Red Hills Firka of Ambattur Taluk. When the District Munsif Court at Poonamallee was bifurcated and newly formed District Munsif Court at Ponneri was constituted in 1981, the village comprised in Red Hills Firka were transferred from the jurisdiction of District Munsif Court at Poonamallee, to the jurisdiction of the District Munsif Court at Ponneri. Thus the decree mentioned Puthagaram Village was brought under the territorial jurisdiction of District Munsif Court, Ponneri, in 1981 itself. Thereafter, on 11 January 1988, when District Munsif cum Magistrate Court at Ambathur and Thiruvottiur are newly formed and constituted, the villages

in Red Hills Firka inclusive of Puthagaram Village of Ambattur Taluk were transferred from the jurisdiction of District Munsif Court, Ponneri, to the territorial jurisdiction of District Munsif cum Magistrate Court at Thiruvottiyur. Thereafter, in 2008, civil and criminal court was separated, new District Munsif Court, Thiruvottiyur, is formed, the decree mentioned Puthagaram Village in Red Hills Firka, Ambattur Taluk has come under the jurisdiction of District Munsif Court at Thiruvottiyur. The respondents thus, submitted that neither the District Munsif Court at Poonamallee at the time of institutin of the suit nor the decree passed and EP filed, court has got jurisdiction over the subject matter before it.

13. Insofar as the jurisdiction is concerned, Section 21 of CPC is very clear that “no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice”.

14. It is clear that the jurisdiction issue has to be raised at the earliest point of time before settling the issue and not thereafter. Further the

respondents have to show that there has been a consequent failure of justice. But, in this case, the respondents have not satisfied the said section and further regarding the jurisdiction of the Execution Court is concerned, the relevant provisions are Sections 37, 38 and 39 of CPC and the same is extracted as under:-

“37. Definition of Court which passed a decree .-
The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

[*Explanation .-* The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]

Section 38 of CPC reads as follows:-

A decree may be executed either by the court which passed it, or by the Court to which it is sent for execution.

Section 39 of Code of Civil Procedure 1908. "Transfer of decree"

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court [of competent jurisdiction],-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed. “

15. Section 21 of CPC reads as follows:-

21. Objections to jurisdiction .- [(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless

there has been a consequent failure of justice.

[(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

A combined reading of Sections 37, 38 and 39 of CPC together with Section 21 of CPC, is necessary to apply the provisions in the case on hand. Raising jurisdiction point before the trial court is concerned, as per Section 21 of CPC, no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. So, it is clear that the Executing Court failed to consider the legal provision.

16. As per the settled proposition of law, the respondents have not raised such objection regarding territorial jurisdiction in the first instance

before the trial court and therefore, before the Executing Court, they cannot raise such objection. Even otherwise, as per Explanation of Section 37 of CPC, with regard to territorial jurisdiction, the order of dismissal of execution petition for want of territorial jurisdiction is not sustainable.

17. At the time of the filing of Execution Petition, if the properties to be delivered are not within the local limits of District Munsif, Ambattur, when the Execution Court find that the court has no jurisdiction to execute the decree, it should have either transferred the execution petition suo motu to the competent court, which has got the jurisdiction to deal with the same. The Execution Court otherwise should have returned the Petition, before taking it on file and asked the party to present the execution petition before the competent court which has got the jurisdiction. But the Execution court cannot simply dismiss the petition on the point of jurisdiction, after taking it on file.

18. As far as the other ground taken by the Execution Court for dismissing the execution petition that the trial court cannot traverse beyond the preliminary decree; the trial court, without jurisdiction passed the final decree and it is not in consonance with the preliminary decree and the Commissioner acted beyond the scope of the Commissioner warrant and

executed warrant is concerned, as already stated, the respondents have not challenged the final decree passed by the trial court and therefore, the final decree passed by the trial court attained finality. If at all aggrieved by the judgment and decree, the respondents would have challenged the same before the appellate court and not before the Execution Court. Therefore, at any angle, the dismissal order passed by the District Munsif, Ambattur, is liable to be set aside.

19. In the result, the Civil Revision Petition is allowed. The order passed in E.P.NO.143 of 2008 in O.S.No.58 of 1997 dated 09.09.2011 on the file of District Munsif, Ambattur, is set aside and the matter is remanded back to the Executing Court. The Executing Court, is directed to act in accordance with law. In case, the executing court finds that the property is out of its jurisdiction, the executing court is directed to transfer the execution petition to proper court after giving notice to both the parties mentioning the date of appearance before the transferee court. No costs. Consequently, connected Miscellaneous Petition is closed.

27.08.2020

Index:Yes/No
Speaking/Non Speaking
nvstri

C.R.P.(NPD).No.395 of 2012

P.VELMURUGAN,J.

nvsri

To

1.The District Munsif Court, at Ambattur.

2.The Section Officer, V.R. Section, High Court, Madras



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