

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2242 of 2015
and
M.P.No.1 of 2015

Manikandan

... Petitioner

-Versus-

Madhavan (Deceased)

1.M.Kamalakaran
2.M.Gopal

.... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 30.04.2015 made in E.A.No.1829 of 2015 in E.P.No.1901 of 2012 in O.S.No.7479 of 1994 by the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.V.Ramanujan,
Senior Counsel
for Mr.P.Valliappan

For Respondent(s) : Mr.G.Mohana Krishnan for RR1
and 2

ORDER

This civil revision petition is directed against the order of the learned IX Assistant Judge, City Civil Court, Chennai, appointing an Advocate Commissioner for the purpose of inspecting the suit schedule property, measuring and demarcating the same with the help of a surveyor for delivery of possession of the same to the decree-holder, the petitioner herein.

2. The revision petitioner is the decree holder in O.S.No.7479 of 1994 XVII Assistant Judge, City Civil Court, Chennai, which was filed against the other brothers and parents for recovery of a possession. Pending suit, the parents of the petitioners died. The above said suit was decreed on 10.11.2008. Aggrieved by the same, the defendants preferred an appeal in A.S.No.628 of 2008 on the file of the learned V Additional Judge, City Civil Court, Chennai which was dismissed on 12.11.2010. Further aggrieved by the same, the defendants filed a second appeal in S.A.No.576 of 2011 before this court

which was also dismissed on 21.06.2011. Thereafter, the defendants filed a special leave petition in SLP No.13241-13242 of 2014 which got dismissed on 25.08.2014. Ultimately, the decree in O.S.No.7479 of 1994 has become final. Thereafter, the respondents herein along with three others filed a review application in Review Application 166 of 2011. That review application was also dismissed on 14.03.2014. In the mean while, the petitioner initiated an execution proceedings in E.P.No.1901 of 2012 before the IX Assistant Judge, City Civil Court, Chennai, for recovery of possession. Pending execution proceedings, the respondents/judgement-debtors raised a plea that the suit was for possession of an extent of 1660 square feet alone, but, the actual extent available is 1870 square feet. Therefore, according to the respondents, as per the decree, the petitioner is entitled to take possession of in respect of 1660 square alone and not more than that. However, the executing court had rejected the contention of the respondent holding that the executing court cannot go beyond the decree and the delivery will be ordered as per the decree. Challenging the same, the respondents filed a revision before this court in C.R.P.No.2593 of 2014 which was dismissed by this court on 15.07.2014. In the mean time, the application filed by the respondents under Section 47 of CPC was also dismissed. After disposal of those applications, the petitioner filed the application under revision for appointment of Advocate Commissioner to measure the suit schedule property with the help of a surveyor and to demarcate the same for the purpose of delivery of possession of the actual extent covered by the decree. That application was allowed by the executing court. Challenging the same, the decree-holder is before this court with this application.

3. This revision petition is coming up today for admission. I have heard the learned senior counsel for the petitioner and the learned counsel for the respondents and also perused the records carefully.

4. The learned counsel for the petitioner would submit that having lost their case, the respondents had raised a new plea that the extent what is available in suit survey number is more than the extent covered under the decree which is sought to be executed. This plea was earlier negative by the executing court which was confirmed by this court by order in revision in CRP No.2593 of 2014. Despite the same, the executing court, without considering the legal position and the facts and circumstances of the instant case, ordered for appointment of Advocate Commissioner at the instance of the judgement-debtors which is per se illegal. The order of the executing court appointing an Advocate Commissioner for the purpose of measuring and demarcating the suit property for delivery of possession of the

property covered by decree is against the order passed by this court in the earlier revision petition.

5. Per contra, the learned counsel for the respondents would contend that the suit was for recovery of possession of 1660 square feet alone and whereas the actual extent available in the suit survey number is 1870 and therefore, as per decree, the petitioner is entitled to recover possession of 1600 square feet alone and not more than that. In such circumstance, the application under revision came to be filed which was rightly allowed by the executing court and no illegality or irregularity could be attached to the same.

6. The learned counsel for the respondents would further contend that the petitioner should necessarily go by the decree and take delivery only in respect of 1660 square feet and not more than that.

7. I have considered the rival submissions carefully.

8. Admittedly, the suit was for recovery of possession of 1660 square feet of land, however, with specific boundaries. The suit was decreed as prayed the respondents lost their case even before the Hon'ble Supreme Court. Thus, the decree has become final. The review application filed by the respondents also came to be dismissed by this court. In all those proceedings, the respondents never raised the plea with regard to the extent of the property in question. For the first time, only after the petitioner filed an application for delivery of possession through executing court, the respondents came out with the application under revision for appointment of Advocate Commissioner for the purpose of measuring and demarcating the suit property to enable the petitioner to take possession of 1660 square feet of land. This plea was earlier negatived by the executing court and the same was confirmed by this court in the earlier revision petition filed by the respondents in C.R.P.No.2953 of 2014 by order dated 15.07.2014. The relevant portions of the order read as follows:

"2. No notice is necessary to the respondents as this court is convinced to direct the Executing Court to execute the Execution Proceedings and no prejudice would cause to the respondents. Hence, notice to the respondents is dispensed with.

3. Taking into consideration of the fact that the Original Suit was filed in the year 1994; the same was confirmed by this Court in Second Appeal No.576 of 2011 on 21.06.2011 and the Review Application filed by the respondents in R.A.No.166 of 2011 was dismissed on

14.03.2014, there is no occasion for the trial court to keep the Execution Proceedings which was filed in the year 2012 and is pending without any disposal.

4. It is to be noted that no Appeal has been filed against the Judgement of this Court made is S.A.No.576 of 2011 dated 21.06.2011 and it attained finality by dismissal of the Review Application.

5. The Review Application filed before this court was dismissed as early as on 14.03.2014 and the order copy was made ready on 10.04.2014. Though three months period have lapsed, no appeal was filed before the Hon'ble Supreme Court. Unless there is any stay order by the Hon'ble Supreme Court, the Executing Court cannot postpone the delivery.

6. In view of the same, the trial court is directed to pass appropriate orders, ordering delivery of possession to the petitioner, within a period of three weeks from the date of receipt of a copy of this order."

9. In the above circumstances, once this court had already concluded that the executing court cannot go beyond the decree and the petitioner is entitled to take possession as per the schedule mentioned in the decree, the executing court ought not to have allowed the application for appointment of Advocate Commissioner for the purpose of measuring and demarcating the property for delivery of possession of the property. Thus, this court is of the considered view that the order passed by the executing court is totally against the order earlier passed by the executing court which was also confirmed by this court in C.R.P.No.2593 of 2014. Therefore, the order impugned in this revision petition requires interference and the revision petition succeeds accordingly.

In the result, this civil revision petition is allowed and the order of the court below is set aside and the application in E.A.No.1829 of 2015 is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Kmk

To

1.The IX Assistant Judge, City Civil Court, Chennai.

+1cc to Mr.P.Valliappan, Advocate, SR. No. 5786

+1cc Mr.G.Mohanakrishnan, Advocate, SR. No. 5428

C.R.P.No.2242 of 2015

SPD (CO)

RMP (17/07/2020)



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