

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

C O R A M

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (NPD) NO.1531 OF 2020
AND CMP NO.9156 OF 2020

Purushothaman

... Petitioner

Vs.

Lakshmi Ammal

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order in E.A.No.219 of 2015 in E.P.No.70 of 2013 in O.S.No.116 of 1977 dated 30.08.2019 on the file of the learned Principal District Munsif, Villupuram.

For Petitioner : Mr.N.Suresh

ORDER

This Civil Revision Petition is directed against the dismissal of the Execution Application filed to correct the decree passed in O.S.No.116 of 1977 on the file of Principal District Munsif, Villupuram, while functioning as Executing Court.

2.The petitioner filed an Execution Petition for delivery of possession. At the stage of issuing of delivery warrant, it was found that the survey number was found missing in the decree passed in O.S.No.116 of 1977. The petitioner filed an execution application for correction of decree which was dismissed. Aggrieved over the same, the Civil Revision Petition has been filed.

3.The learned counsel for the petitioner would rely on a judgment of this Court in ***CRP (NPD) No.448 of 2005 dated 13.01.2015*** for the proposition that the Executing Court can correct the decree.

4.I have heard the submissions made by the learned counsel for the petitioner.

5.From the perusal of the materials, it is seen that the suit was filed for declaration of title in respect of the suit property situated in S.No.486/3, Ac 0.33 cents in Viswareddipalayam in Madurapakkam, Vikravandi Registry, Villupuram Taluk. At the first round of litigation, a decree was passed in favour of the petitioner / plaintiff on 30.12.1978. In

the said decree, the survey number was mentioned. However, after remand, in the second round of litigation, the suit was dismissed by a decree dated 31.07.1995. In that decree, the survey number has been omitted to be mentioned. Ultimately, the matter was decided in favour of the petitioner on appeal and it was confirmed by this Court in Second Appeal. It is relevant to mention that this Court in its decree passed in S.A.No.1440 of 1998 dated 17.09.2012 directed the respondent herein to restore possession of the suit property to the petitioner / plaintiff within three months. Thus, the petitioner's title was decreed and he filed the above Execution Petition for delivery of possession.

6. Only at the stage of issuance of warrant for delivery, it was realised that the decree dated 31.07.1995 does not contain the survey number. It is also relevant to mention that the learned Principal District Munsif, Villupuram, while functioning as Executing Court, the petitioner filed an execution application to correct the decree by incorporating the survey number omitted to be mentioned. But the said application was dismissed on the ground that the Executing Court cannot go behind the decree and it is only the decretal Court can correct the decree.

7.It is true that the Executing Court cannot go behind the decree under execution. It is relevant to note that in the judgment of the Hon'ble Supreme Court in **TIKO (SMT) AND OTHERS VS. LACHMAN [AIR 1995 SUPPL. (4) 582]** it is held as under:

“3. Technically speaking the executing court could not go beyond the decree and hence the order passed by it is not assailable. But the executing court was also the court which could have amended the plaint and the decree. Counsel for the appellants states that although the decree was passed by Sub-Judge Class III, Sonapat, the very same court later exercised powers as Sub-Judge Class I and was executing the decree. It was, therefore, open to that court to treat the application as an application made before the decretal court and proceed to dispose of the same in accordance with law.”

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8.In view of the above judgment, the same learned Principal District Munsif, Villupuram, while sitting as an Executing Judge, can treat the application as an application made before the decretal Court and

proceed to dispose of the same in accordance with law. Therefore, in the interest of justice, the learned Principal District Munsif, Villupuram, can exercise his power as a decretal Court also.

9.The Hon'ble Supreme Court in **BHAVAN VAJA VS. SOLANKI HANUJI [AIR 1972 SC 1371]** has held as under:

“19.It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began & ended with merely looking at the decree as it

was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution court does not appear to have considered those documents. If one reads the order of that court, it is clear that it failed to construe the decree though it purported to have construed the decree. In its order there is no reference to the documents to which we have made reference earlier. It appears to have been unduly influenced by the words of the decree under execution. The appellate court fell into the same error. When the matter was taken up in revision to the High Court, the High Court declined to go into the question of the construction of the decree on the ground that a wrong construction of a decree merely raises a question of law and it involves no question of jurisdiction to bring the case within [Section 115](#), Civil Procedure Code. As seen earlier in this case the executing court and the appellate court had not construed the decree at all. They had not even referred to the relevant documents. They had merely gone by the words used in the decree under execution. It is clear that they had failed to construe the decree. Their

omission to construe the decree is really an omission to exercise the jurisdiction vested in them. “

As per the above judgment, it is true that the Executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree.

10.As discussed above, in the first round of litigation, in the decree dated 30.12.1978, the survey number is mentioned. It is also to be noted that the plaint also contains the very survey number. It is not the case that the decree is sought to be executed in respect of some other property. At this juncture, it is relevant to mention that this Court in ***M.CHOKKAPPAN VS. C.SELVARAJ [2004 (4) LW 735]*** has held as under:

“6.I am in respectful agreement with the judgment reported in 1998-II M.L.J. 99 and of the view that at the time of filing the Rent Control Original Petition for eviction T.S.No. could have been omitted to be mentioned

by mistake, the decree-holder can seek to incorporate the same in the delivery warrant, in that no hardship will cause to the respondent/tenant, inasmuch as the property was described with correct boundaries and it was also not challenged before the Rent Controller as regards the identity of the property. In that view the revision petition is to be allowed by setting aside the order of the Executing Court. “

11. Therefore, considering the above judgments and the factual background of this case, it could be inferred that the correction, which is sought to be made in the decree before the Executing Court does not involve any substantial alternation changing nature of the suit or the nature of the suit property or its identity. In these circumstances, the learned Principal District Munsif, functioning as decretal Court as well as Executing Court can correct the decree incorporating the survey number, which was omitted to be typed. It is a simple clerical error which can always be corrected in the interest of justice. The correction will assist the Court to easily identify the property and smoothen the process

of execution, in which process, the judgment debtor cannot raise any issue, as there is a positive direction issued by this Court in the Second Appeal. Therefore, in the interest of justice, the Executing Court, can correct the clerical omission committed in the drafting of the decree.

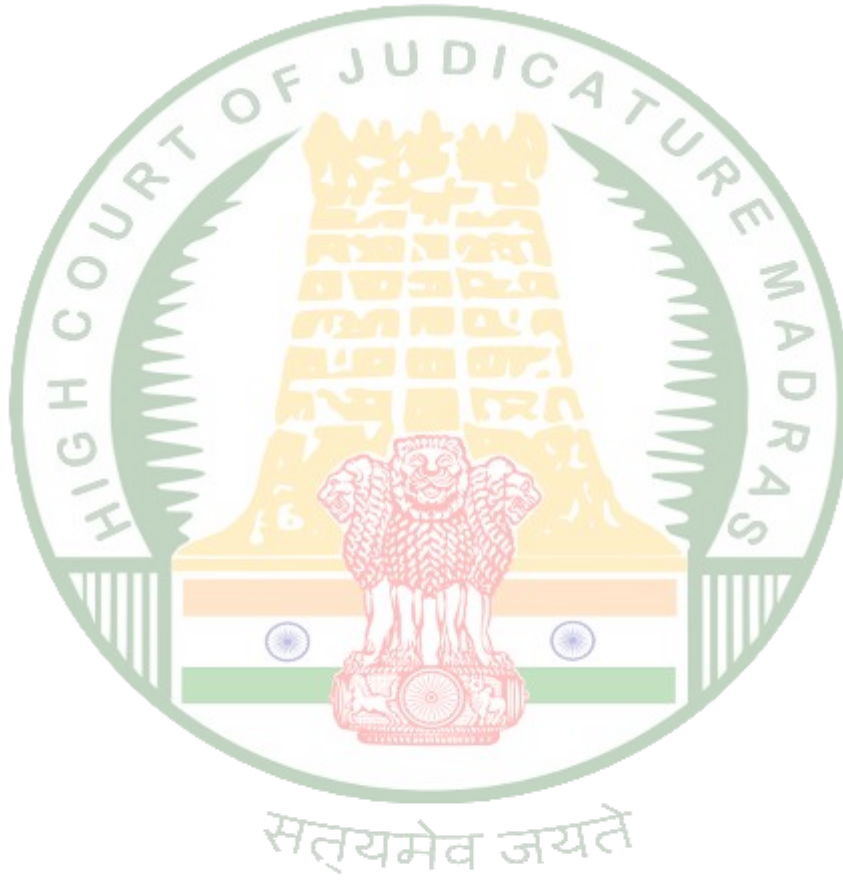
12.In *CRP (NPD) No.448 of 2005 dated 13.01.2015*, the Hon'ble Mr.Justice K.Kalyanasundaram relying on various judgments has also held that the Executing Court has jurisdiction to order amendment of the execution petition invoking Section 151 CPC to meet the ends of justice. I do follow the above judgment. Accordingly, the Execution Court is directed to correct the error and proceed with the execution proceedings without any delay.

13.With the above direction, the Civil Revision Petition is ordered. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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