

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 16.03.2020

Coram

THE HONOURABLE MR.JUSTICE P.VELMURUGAN**C.R.P. (MD) .PD.No.443 of 2020****and****C.M.P. (MD) .No.2639 of 2020**

WEB COPY

Rajammal (died)

1.Sekar

2.Subetha

3.Ujitha

4.Joseph

... Petitioners/Respondents

(cause title accepted vide court order dated 12.02.2020 made in
cmp (md) .No.1264/2020)

Vs.

George (died)

1.Amalorpavam

2.Jacob Andersons

3.Rose Bella

4.Mary Valentina

.... Respondents 1 to 4/Plaintiffs

5.Vimally

6.Bharath

.... Respondents 5 and 6/Defendant

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 02.12.2019 passed in E.A.No.4/2019 in E.P.No.77/2014 in O.S.No.266 of 2001 on the file of the Sub Judge, Valliyoor, Tirunelveli District.

For Petitioner

: Mr.K.Rajeswaran

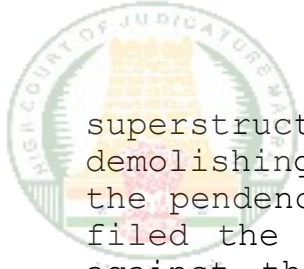
For Respondents

: Mr.S.Karuppiah

O R D E R

This Civil Revision Petition has been filed against the order dated 02.12.2019 passed in E.A.No.4/2019 in E.P.No.77/2014 in O.S.No.266 of 2001 on the file of the Sub Judge, Valliyoor, Tirunelveli District.

2.Learned counsel for the petitioners would submit that the respondents 1 to 4 filed a suit against one Rajammal, mother of the petitioners 1 to 4 for specific performance and hand over the vacant possession. The said suit was decreed. In order to execute the said decree, the respondents 1 to 4 filed an execution petition in E.P.No.77 of 2014 for delivery of possession. The said E.P was resisted by the said Rajammal. After hearing the arguments, the court ordered by the Execution Court. Subsequently, when the Court Amin went to execute the warrant issued by the Execution Court, he found some of the portions were encroached by



superstructures. Therefore, he issued a fresh warrant for demolishing the superstructures found in the suit property. During the pendency of the Execution Proceedings, now, the petitioners have filed the present E.A.No.4 of 2019 stating that the decree passed against the said Rajammal is only exparte decree and it is not valid in law and for demolition and vacant possession, notice was served neither to the said Rajammal nor to the legal heirs of Rajammal. The said Rajammal died on 19.10.2019. Demolition and possession of vacant land was ordered on 02.12.2019, i.e after the death of the said Rajammal. Therefore, the order passed by the E.P Court is not maintainable and this civil revision petition has to be allowed.

3.The learned counsel for the respondents/plaintiffs would submit that the respondents got a decree in the suit and after filing the E.P, Rajammal also participated in the execution proceedings. During the lifetime of Rajammal, she has not taken any steps either to set aside the exparte decree or filing counter stating that she is not in possession and third party is in possession. Even though notice in E.P was served to the said Rajammal, she has not taken any steps. Therefore, delivery was ordered. When the court amin went to execute the warrnt, he found some portions were encroached by superstructures. Therefore, he returned the warrant for want of order for demolition. At that time, the petitioners filed the present application under Order 21 Rule 97 of C.P.C praying to declare the exparte decree as null and void, as if they are third party obstructors interested in the petition mentioned property.

4.On a perusal of the records reveal that even after the suit was decreed, the said Rajammal has not taken any effective steps to set aside the said exparte decree. Subsequently, notice was served in the execution proceedings. Even after receipt of notice, she has not taken steps either to set aside the exparte decree or filed counter stating that she is not in possession and third party is in possession. Therefore, the Execution Court found that the decree holder is entitled to vacant possession and therefore, delivery was ordered. After the order of the delivery, even before issuance of the warrant, the said Rajammal died on 19.10.2019. Thereafter, the execution petition filed by the petitioners was pending and the E.P court found that the Rajammal never stated that she was not in possession of the property and third parties were in possession. The petitioners also stated that they have right over the property as third party obstructors. Therefore, the fact remains that till the death of Rajammal, she has not resisted the execution proceedings either by way filing counter or setting aside the exparte decree. Even during the life time of Rajammal, delivery was ordered and warrant was issued and it was not challenged by the said Rajammal. So, after the delivery was ordered, the petitioners have filed the application under Order 21 Rule 97 of C.P.C, but not under Order 21 Rule 99 of C.P.C. They are only legal heirs of the Rajammal and they can step into shoes of

the said Rajammal.

5.As stated above, the Execution Court elaborately discussed the entire facts in detail. Hence, this Court does not find any merit in the order passed by the Execution court, since said Rajammal neither filed any counter and resisted the execution petition nor set aside the exparte decree and only at the time when the Court amin went to the property to execute the warrant, he found some portions of the property was encroached by superstructures. Therefore, he returned the warrant for want of order for demolition and this Court does not find any merit in the revision petition. Further, this Court is of the view that the petitioners are not having any independent right over the property as they are only legal heirs of the said Rajammal and not as third party obstructors. They have filed an application only under Order 21 Rule 97 of C.P.C, not under Order 21 Rule 99 of C.P.C and they have not established their independent right in the suit property. Therefore, they can only step into the shoes of the said Rajammal. Therefore for mere non-serving of the notice to the legal representatives of the said Rajammal, order passed for demolition and hand over vacant possession, do not suffer from any irregularity or illegality. Hence, this Court does not find any merit in this civil revision petition.

6.Accordingly, this petition is dismissed. No costs. The Executing Court viz., the learned Subordinate Judge, Valliyoor, Tirunelveli District is directed to give effect to the decree passed in E.P.No.77/2014 in O.S.No.266 of 2001 within a period of one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs
To
The Subordinate Judge,
Valliyoor,
Tirunelveli District.

Copy to:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

C.R.P. (MD) .No.443 of 2020