



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.1160 of 2019 and

C.M.P.(MD)No.6270 of 2019

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Amutha

: Petitioner/Petitioner/Respondent/
Defendant-1

.. Vs ..

Banumathi (Died)

1.Lakshmi

: Respondent/Respondent/Petitioner/
Plaintiff

2.Ramalingam

3.Elumalai

: Respondents/Respondents/Respondents
Defendants 2 & 3

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order and decree passed in E.A.No.02 of 2018 in E.P.No.121 of 2011 in O.S.No.318 of 2000 on the file of the I Additional District Munsif Court, Kumbakonam, Thanjavur District, dated 27.09.2018.

For Petitioner

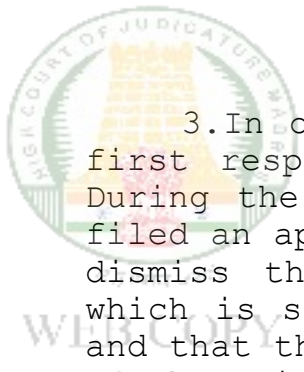
:Mr.G.Gomathi Sankar

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ORDER

This Civil Revision Petition is directed against the order passed by the learned I Additional District Munsif, Kumbakonam, Thanjavur District, in E.A.No.02 of 2018 in E.P.No.121 of 2011 in O.S.No.318 of 2000, dated 27.09.2018.

2.The revision petitioner is the first defendant in the suit in O.S.No.318 of 2000. The first respondent in this Civil Revision Petition, as plaintiff, filed the said suit seeking for permanent injunction as well as for mandatory injunction directing the defendants to remove the construction put up by them in the suit 'B' schedule property and to restore suit "B" schedule property. Though the trial Court dismissed the suit, the appellate Court in A.S.No.08 of 2009 decreed the suit insofar as the relief of mandatory injunction. Aggrieved by the same, it is admitted that the revision petitioner preferred a second appeal with the huge delay and the second appeal was dismissed at the SR stage by dismissing the application filed to condone the delay of 1754 days in filing the second appeal.



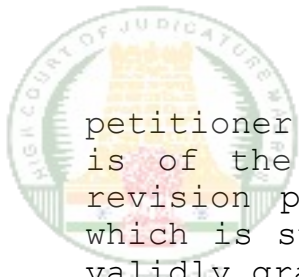
3. In order to execute the decree for mandatory injunction, the first respondent filed E.P.No.121 of 2011 in O.S.No.318 of 2000. During the pendency of execution petition, the revision petitioner filed an application under Section 47 of CPC in E.A.No.02 of 2018 to dismiss the execution petition on the ground that the property, which is sought to be executed, belongs to the revision petitioner and that the property of first respondent, which is a subject matter of the suit, had already been acquired by the Highways Department.

4. The I Additional District Munsif Court, Kumbakonam, after considering the issues elaborately, dismissed the petition filed by the revision petitioner. Aggrieved by the same, the present revision petition is filed.

5. The learned Counsel for the revision petitioner submitted that the Court below failed to see that the suit property was acquired by the National Highways Department and that the property, which is the subject matter of the suit, is in the enjoyment of the National Highways Department. The learned Counsel further submitted that the property of revision petitioner is situated in the very same survey number, ie., S.No.699/37 and the property which is in the enjoyment of the revision petitioner is subdivided as the property in S.No.699/37B and S.No.699/37B is in the enjoyment of National Highways. Stating that the property for which the plaintiff/first respondent filed the suit falls in S.No.699/37A, it is contended that the respondents cannot execute the decree as against the revision petitioner under the guise of decree.

6. The dispute now raised by the revision petitioner is on the basis of identity of properties, based on revenue records. The revision petitioner raised the same plea before the trial Court and before the appellate Court and the suit as well as the appeal were decided on merits. From the stand taken by the learned Counsel for the petitioner, it is seen that the revision petitioner claims title on the basis of patta. The Court below, on examination of documents, has found that the revision petitioner was given patta for more than the property, for which he can claim title on the basis of sale deed produced by her. In such circumstances, the position that the revision petitioner tries to re-agitate the points, which she had argued in the suit and appeal earlier in obvious.

7. This Court in an application filed under Section 47 CPC, cannot re-appreciate the evidence or to allow anyone to re-agitate the points or issues, which were already decided in the suit. The application filed under Section 47 CPC is not to permit the litigant to re-agitate the issue, which are settled in the suit or in appeal. Only on the limited grounds relating to discharge or satisfaction of decree, the petition can be entertained under Section 47 CPC. Having regard to the nature of plea, that is raised by the revision



petitioner in the application filed under Section 47 CPC, this Court is of the view that the application cannot be maintained by the revision petitioner, who claims title once again to the property, which is subject matter of the suit and for which a decree has been validly granted after considering all issues on merits.

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8.As a result, this Civil Revision Petition is dismissed and the order passed by the learned I Additional District Munsif, Kumbakonam, Thanjavur District, in E.A.No.02 of 2018 in E.P.No.121 of 2011 in O.S.No.318 of 2000, dated 27.09.2018, is confirmed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

Cmr

To

The I Additional District Munsif,
Kumbakonam, Thanjavur District.

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-15046[F] dated 27/08/2020)

+1 CC to M/s.G. GOMATHI SANKAR, Advocate (SR-15218[F] dated 28/08/2020)

C.R.P. (NPD) (MD)No.1160 of 2019
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VB (07.09.2020) 3P 4C