



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.12.2019
DELIVERED ON: 16.03.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)Nos.1979 and 1980 of 2019

and

C.M.P.(MD)No.10206 of 2019

WEB COPY

D.Karuppayee Ammal .. Petitioner in both C.R.Ps./Petitioner/
Respondent / 1st Defendant
Vs.

1.Madurai Town Bibikulam Nethaji Road,
Arulmigu Ayyanar koil,
Arulmigu Manthaiamman Kovil,
Arulmigu Muniyandieswar Temple,
Rep. By its Trustee, Door.No.86,
Nethaji Main Road, Bibikulam,
Madurai 02.

2.Archunan

3.N.Darmar

4.Selvamayandi

Gunasekaran (Died)

5.K.Muthusamy

6.R.Periyasamy .. Respondents in both C.R.Ps./ Respondents/
Petitioners / Plaintiffs

Common Prayer: These Civil Revision Petitions were filed under Section 115 of the Civil Procedure Code, to set aside the impugned order passed in E.A.No.170 and 171 of 2019 in E.P.No.72 of 2015 in O.S.No.1580 of 2004 dated 01.10.2019 on the file of the Principal District Munsif Court, Madurai Town.

For Petitioner(in both C.R.Ps.)

: Mr.M.Ponniah

For Respondent(in both C.R.Ps.)

: Mr.T.Sivananthan

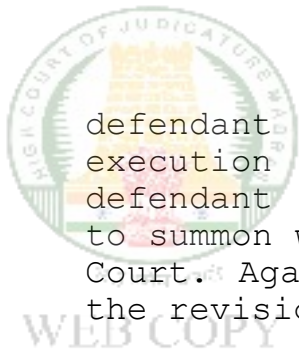
1 and 4

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the orders passed in E.A.No.170 and 171 of 2019 in E.P.No.72 of 2015 in O.S.No.1580 of 2004 dated 01.10.2019 on the file of the Principal District Munsif Court, Madurai Town.

3.The revision petitioner herein is the first defendant and the respondents herein are the plaintiffs in the suit. The respondents filed a suit in O.S.No.1580 of 2004 against the petitioner and the suit was decreed in favour of the respondents/plaintiffs. The plaintiffs filed a petition in E.P.No.72 of 2015 for delivery of possession. In that E.P., the first



defendant filed an application in E.A.No.170 of 2019 to reopen the execution petition, which was reserved for orders. The first defendant filed an application in E.A.No.171 of 2019 to permit her to summon witnesses. But these petitions were dismissed by the trial Court. Against which, the petitioner herein has come forward with the revision petition.

4.A brief substance of E.A.Nos.170 and 171 of 2019 is as follows:

The respondents are not entitled for any kind of relief on the basis of the decree passed in O.S.No.1580 of 2004. Regarding the petition mentioned property, comprised in R.S.No.23/24, one Lakshmanan filed a writ petition in W.P.(MD)No.24207 of 2016 for an order of removal of encroachment. The Public Works Department issued a notice to remove the encroachment from the Kanmai poramboke. The Tahsildar, Madurai North Taluk issued two notices to remove the encroachment. In the writ appeal in W.A.(MD)No.344 of 2013, direction was given to the revenue authorities to decide the matter on merits. E.P. was reserved for orders on 03.08.2019 and the decree obtained by the respondents become nullity. The petitioner filed application in E.A.No.170 of 2019 to reopen the execution petition and I.A.No.171 of 2019 to permit the petitioner to summon the witness.

5.A brief substance of the counter in E.A.Nos.170 and 171 of 2019 is as follows:

The suit property is a patta land. The respondent never encroached upon the kanmoi poramboke. The petitioner encroached the land that belongs to the first respondent temple and she is creating nuisance to the public. Hence, the respondents filed a suit in O.S.No.1580 of 2004 for declaration and for mandatory injunction to remove the encroachment. Even after obtaining a decree, the officials did not take any action. The respondents filed a writ petition before this Court in W.P.(MD)No.25050 of 2018, challenging the impugned notice dated 28.11.2005 issued by the Assistant Engineer, PWD/WRP, Irrigation Section No.III, Periyar Vaigai Basin division I, Madurai. This Court has given a finding directing the respondents not to proceed with the impugned notice in any manner. The temple is situated in the place for more than 100 years. Declaratory relief is in favour of the temple. The first respondent temple is not an encroacher and without raising a counter or an additional counter, the petitioner is seeking permission to let in evidence. An execution Court cannot go beyond the decree.

6.After hearing arguments on both the sides and when the execution petition was posted for orders, the petitioner has no locus standi to reopen the execution petition. Examination of witness and letting in oral evidence is not possible in the execution proceedings. As W.P.(MD)No.25050 of 2018 was already allowed by this Court, the examination of witness is not necessary. The purpose of reopening has become infructuous. Already the



petitioner has filed a petition under Section 47 of CPC raising the same ground and that petition was rejected by this Court.

7.The trial Court after considering both sides, dismissed both the petitions. Against which, the petitioner has come forward with these petitions.

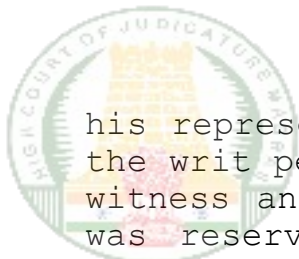
8.On the side of the petitioner, it is stated that this Court has already passed an order in W.P.(MD)No.24207 of 2016 dated 10.01.2007 to remove the encroachment from Kanmoi poramboke and a notice was issued to the first respondent by the authorities and a contempt petition also was pending. Those documents are to be marked. Hence, the order of the lower Court is unsustainable.

9.On the side of the petitioner, it is stated that the property is situated in a kanmoi poramboke and that the Temple has encroached upon 7 cents and that a public interest litigation was filed by one Lakshmanan and the Division Bench has ordered to remove the encroachment and that the revenue authorities issued notice for eviction and that the respondents filed W.P.(MD)No.25050 of 2018, challenging the notice and these subsequent steps were not brought to the notice of the execution Court and that the decree become a nullity and the proceedings was not challenged.

10.On the side of the respondents, it is stated that all the revenue officials are impleaded as the parties to the suit. The suit was filed for declaration of title on the basis of adverse possession. Since the defendants are set exparte, an exparte decree was passed and that the petitioner want to summon three witnesses, who are all already parties to the suit. This fact was suppressed by the petitioner. Execution Court cannot go beyond the decree. No new grounds was raised by the petitioner. No restoration petition was filed against the exparte decree. No appeal was filed. Decree is in force. On 05.11.2019, delivery was ordered. The petitioner is not a party in W.P.(MD)No.24207 of 2016 and the order is not binding upon the petitioner.

11.The case of the petitioner is that the petition mentioned property is a Kanmoi and a public interest litigation was filed for eviction of encroachment in the kanmoi poramboke.

12.It is seen that the notice for eviction was issued by the revenue authorities. The case of the respondents is that the property is a private property continuously enjoyed by the respondents and the respondents filed the suit against the petitioner and the revenue officials. The respondents obtained an exparte decree. No restoration petition was filed. No appeal was filed against the exparte decree and the decree is valid. It is stated that the respondents filed another writ petition against the issuance of notice of eviction and he obtained an order to consider



his representation. The petitioner want to file documents regarding the writ petition before the execution Court and she wants to summon witness and she also wants to reopen the execution petition, which was reserved for orders. Against the notice, W.P.(MD)No.25050 of 2018 was filed by the respondent and the notice become invalid. Subsequent proceedings were suppressed by the petitioner. There is no reason to reopen the case or to summon any witness. It is seen that the E.P was filed against an exparte decree. The Government was only the defendant in the suit. The defendants 2 to 3 are the co-officials. Decree was passed for mandatory injunction to issue patta and for a mandatory injunction to issue no objection certificate. Against the exparte decree, both the petitioner and the Government did not file any appeal or restoration petition. When the case of the petitioner is that the suit property is a kanmoi poramboke and that revenue officials issued eviction notice to the respondent, both the petitioner and the Government failed to file restoration petition or appeal against the exparte decree. Without taking steps to set aside the E.P. Proceedings, the petitioner has filed two execution applications. One to reopen the execution petition and to summon witness, which will not serve the purpose.

13.In the above circumstances, the proper way to set right any mistake is only to file either a restoration petition or an appeal against the decree. The petitioner is given liberty to file a restoration petition against the exparte decree within a period of one month from the date of receipt of copy of this order and thereupon the learned District Munsif, Madurai Town is directed to dispose of the petition within a period of three months therefrom without considering the limitation period. E.P.No.72 of 2015 is to be kept stayed till then.

14.With the above direction, the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Principal District Munsif, Madurai Town.

+1 CC to M/s.M.PONNIAH, Advocate (SR-11736[F] dated 16/03/2020)

C.R.P.(MD)Nos.1979 and 1980 of 2019

16.03.2020

SMA/24/03/2020/4P/3C

<https://hcservices.ecourts.gov.in/hcservices/>