



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD)No.2327 of 2019

Mani

.. Petitioner / 7th respondent

Vs.

Ponnusamy Chettiyar (died)

Pandian (died)

1.Suruliammal

2.Dhanalakshmi

3.Ponnampalam

4.Subramanian

5. Gunasekaran

... Respondents/Petitioners/Decree Holders/
Plaintiffs

Perumal (died)

6.Thangavel

7.Velusamy

8.Veluthai

9.Palraj

10.Velmurugan ... Respondents / Legal Heirs of deceased Perumal

(Notice to 6 to 10 respondents is given up as

no relief is claimed against them.)

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the Fair and Decreeal Order dated 20.09.2019 passed in E.P.No.46 of 1998 in O.S.No.864 of 1990 on the file of the District Munsif Court, Aundipatti by allowing this Civil Revision Petition.

For Petitioner

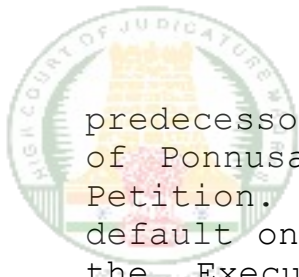
: Mr.B.Rajesh Saravanan

For Respondents 1 to 5

: Mr.A.Arumugam

ORDER

The predecessors of the respondents filed a suit against the predecessors of the petitioner in O.S.No.864 of 1990 for delivery of possession and damages for use and occupation of the suit property. The suit was decreed on 24.06.1993. Then the predecessors of the respondents filed an Execution Petition in E.P.No.46 of 1998. During the pendency of Execution Petition, the



predecessors of Ponnusamy died and subsequently, the legal heirs of Ponnusamy has not taken steps to proceed with the Execution Petition. Therefore, the Execution petition was dismissed for default on 08.12.2005. Then they have filed a petition to restore the Execution Petition and also has filed a comprehensive petition, since Ponnusamy died, the delay in filing the restoration petition has to be condoned and Execution Petition has to be restored. The Execution Application in E.A.No.25 of 2010 was allowed on 16.09.2016. Subsequently, the petitioner issued a notice to the respondents and in the mean while, the petitioner predecessor one Perumal, the Judgment Debtor died and the legal heirs of Perumal impleaded in the Execution Petition. The Execution Petition was proceeded against the legal heirs of Perumal and subsequently, delivery was ordered. Now challenging the said order passed by the Execution Court, the petitioners have filed the present petition and one Civil Revision Petition is filed against the order of delivery and another Civil Revision Petition is filed against the order of restoration petition.

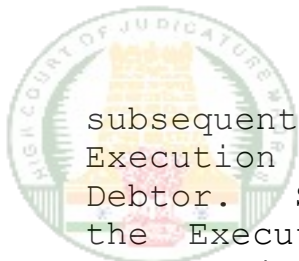
2.During the pendency of Execution Petition, Ponnusamy died and then Execution petition was dismissed. Subsequently, the legal heirs of Ponnusamy taken steps to restore the Execution Petition with delay condonation and comprehensive petition also filed by the legal heirs of the deceased Ponnusamy. That was subsequently taken on file. In the mean while, the Judgment Debtor Perumal also died. Therefore, the legal heirs of Ponnusamy impleaded the legal heirs of Perumal Judgment Debtor and Execution Petition was proceeded. The delivery was ordered on 16.07.2019. The petitioner is not challenging the said delivery order and only after delivery, the Execution Petition was terminated on 20.09.2019. Now challenging the termination order passed by the Execution Court, the present Civil Revision Petition has been filed.

3.The learned Counsel appearing for the respondents would submit that without challenging the order of delivery passed by the Execution Court, consequential order of termination of Execution Petition cannot be challenged.

4.The learned Counsel appearing for the petitioner would submit that he need not challenge the delivery order passed by the Execution Court. The order of delivery is not challenged and therefore, the comprehensive order cannot be challenged.

5.Heard the learned Counsel on either side. Perused the entire materials available on record.

6.Admittedly, in this case, Decree-Holder died and Judgment Debtor also died and the legal heirs of the Decree Holder



subsequently, filed restoration application and proceed with the Execution Petition and impleading the legal heirs of the Judgment Debtor. Subsequently, both the legal heirs have proceeded with the Execution Proceedings. The Execution Court after giving opportunity, delivery was ordered on 16.07.2019. Subsequently, a warrant was issued to Amin. Amin also taken the property from the legal heirs of the Judgment Debtor and delivered to the legal heirs of the Decree Holder. That order was not challenged by the Revision Petitioner. Even though the Revision Petitioner challenged the order of restoration of the Execution Proceedings, had not challenged the order of delivery and by way of this revision Petition he has challenged the termination order passed by the Execution Court and returned the warrant to the Execution Court. Since the report of the Amin was recorded by the Execution Court and the Execution Petition was terminated on 20.09.2019. Therefore, this Court is now informed that the property was delivered and the respondents herein the legal heirs of the Decree Holder taken delivery of the property. Therefore, without challenging the order of delivery, consequential order of termination cannot be challenged, is not maintainable. Therefore under these circumstances, there is no merits in this Revision Petition and the Civil Revision Petition is liable to be dismissed.

7. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To
The District Munsif, Aundipatti.

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-12508[F] dated 19/03/2020)

+2 CC to M/s.A.ARUMUGAM, Advocate (SR-12487[F] dated 19/03/2020)

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(2/2)

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