



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.12.2019

Delivered on : 10.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(MD)No.2168 of 2019

and

C.M.P.(MD)No.11368 of 2019

Sundararajan ... Petitioner/Defendant

Vs.

Pushparani ... Respondent/Plaintiff

Prayer : This revision petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 04.11.2019 in E.A.No.66 of 2015 in E.P.No.26 of 2014 in O.S.No.382 of 2006 on the file of the Principal District Munsif Court, Padmanabapuram.

For Petitioner	: Mr.G.Prabhu Rajadurai
For Respondent	: Mr.C.Godwin

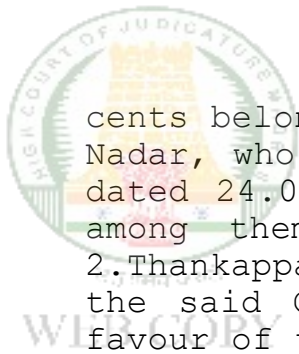
ORDER

This civil revision petition is filed against the order dated 04.11.2019 in E.A.No.66 of 2015 in E.P.No.26 of 2014 in O.S.No.382 of 2006 on the file of the Principal District Munsif Court, Padmanabapuram.

2. The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein is the decree holder and he filed a petition to execute the decree and in that petition, the defendant filed a petition in E.A.No.66 of 2015. The execution Court dismissed that petition. Against which, the petitioner preferred this Civil Revision Petition.

3. Brief substance of the petition in E.A.No.66 of 2015 is as follows:

The decree holder claimed the property through a gift deed, dated 15.02.1994 said to have been executed by her father viz., Chinnaian Nadar. The said Chinnaian Nadar has no right to execute a gift deed. The property in old Survey No.5137 with an extent of 45



cents belonged to 1.Madhevan Nadar, 2.Sivaraman Nadar and 3.Kochappi Nadar, who were the sons of one Bheeman Nadar, as per a partition, dated 24.04.1953. As such they got 1/3 share in the property and among them, Kochappi Nadar had three sons, viz., 1.Chinnaian, 2.Thangappan and 3.Ponnupillai, the decree holder is the daughter of the said Chinnaian. Kochappi Nadar had executed a gift deed in favour of the said Ponnupillai and no partition was effected between the co-owners. The said Ponnupillai sold his 1/3-rd right to his brother / Thangappan, who is the father of the defendant/ judgment debtor, who had in turn executed a gift deed in favour of the defendant / judgment debtor, dated 13.05.2002. As such, the decree passed in O.S.No.382 of 2006 by the trial Court is a great error. Hence, the defendant filed a suit in 202 of 2014, for partition, which is pending and prayed to declare the judgment and decree in O.S.No.382 of 2006 as in-executable and to stay the proceedings.

4. Brief substance of the counter in E.A.No.66 of 2015 is as follows:

The defendant has lost the case up to the Second Appeal. Only to delay the execution proceedings and to prevent the decree holder from enjoying the fruits of the decree the present E.A. was filed. After losing the case, up to the High Court, at the instigation of the defendant's brother / Dharmaraj suits in O.S.No.215 of 2013, O.S.No.202 of 2014 and O.S.No.290 of 2014 were filed. This E.A. is filed as a fourth round of litigation. The said Kochappi Nadar got title and possession over 18 cents of land and after his death, his sons orally divided the properties, in which, the southern side 6 cents was allotted to Chinnayyan Nadar, northern side 6 cents was allotted to Thangappan and further northern side 6 cents was allotted to Ponnupillai and the suit property 6 cents was obtained by the respondent through a gift deed from his father Chinnaiyan Nadar. The respondent filed this suit and has obtained a decree and the case of the defendant was dismissed upto the High Court and then the defendant / revision petitioner filed a suit in O.S.No.382 of 2006 and he put up construction in violation of the order of the Court, then the suit was not pressed by him and hence, this petition is to be dismissed.

5. After hearing both sides, the trial Court dismissed the E.A. petition. Against which, the revision petitioner preferred this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that the trial Court failed to consider that the suit property in survey No.6/38 was having a larger extent and the trial Court failed to consider that the Commissioner has submitted two plans showing different measurements and the trial Court failed to decide which one of the two plans is correct, the trial Court failed to consider that the execution Court cannot go beyond the decree and seeking execution of a decree as per plan 'A' of the Commissioner Report is



anything in the decree and the dismissal of the E.A. petition is technically a non-speaking order.

7. On the side of the revision petitioner, it is stated that the suit was filed for a relief of declaration and for recovery of possession of 6 cents of land and the suit was decreed in favour of the plaintiff, but the property was not clearly described in the suit. A Commissioner was appointed to visit the suit property and he filed two plans (Ex.C1 and C2). The measurement of the property in both the plans are different.

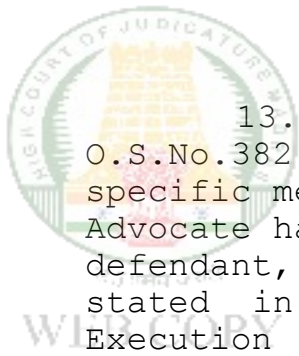
8. On the side of the revision petitioner, it is sated that no plan is annexed with the decree and there is no discussion in the judgment of the trial Court as to the measurement in Exs.C1 and C2. But, E.P was filed to execute the decree on the basis of A plan annexed with the Commissioner report. When the decree did not describe any plan, the E.P. based on A plan is an error. The decree holder has to get clarification, in that decree. There is a difference of 10 to 12 feet between both the plans regarding the North and South measurements. No measurement is given in the plaint description of the property or in the decree. The decree has to be amended and the property has to be identified. The description of the property is questioned in the written statement itself. The respondent can not choose the measurement which ever is beneficial to him.

9. On the side of the respondent, it is stated that the measurement of the property is 6 cents with specific boundaries. The description of the property in the decree and the description of property in the suit are the same and that the suit in O.S.No.382 of 2006 attains finality and that the Identity of the property is not questioned in the written statement, now only the revision petitioner has raised this issue and Ex.A1 was upheld up to the Second Appeal. All the points are already decided.

10. Ex.B9 and B10 show that construction was going on. It is clear that the boundary stones are removed and some were broken.

11. On the side of the revision petitioner, it is stated that part of the building is said to have been within the suit property and that a decree must be specific and the property should be demarcated.

12. The prayer in the E.A. petition is to declare the decree as inexecutable. If the revision petitioner is aggrieved by the decree, he has to take separate steps before the proper Forum. The revision petitioner has failed upto the Second Appeal and he is now questioning the decree indirectly by filing the petition, to declare the decree as in-executable.



13. It is seen that in the suit and in the decree in O.S.No.382 of 2006, only the boundaries are stated and not the specific measurements. A perusal of the E.P. petition shows that an Advocate has been appointed to demolish the construction made by the defendant, by measuring the suit property as per the measurement stated in plan 'A' of the Commissioner report in the suit. Execution Court cannot go beyond the degree, since there is no measurement given in the plaint or in the decree and since plan 'A' was not mentioned as "forms part of the decree", plaintiff cannot insist upon the execution Court to measure the property on the basis of plan 'A' filed by the Commissioner. Staying the Execution Proceeding after a lapse of 14 years is not proper. Hence, the Execution Court is directed to give directions to the Advocate Commissioner to identify the suit property on the basis of the available title deeds and revenue records.

14. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif ,
Padmanabapuram.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-5587[F] dated
11/02/2020)

order
made in
C.R.P. (MD)No.2168 of 2019
10.02.2020

AP(29/06/2020) 4P 5C

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