

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 26TH DAY OF NOVEMBER 2021

THE MASTER

E.P.No.63 of 2019

S.Lakshmipathy,
S/o.Sampath,
No.24, Devan Ram,
Purasaiwalkam Road,
Chennai – 600 084

...Decree Holder/Plaintiff

-Versus-

L.Gowtham Raj,
S/o.Lakshmiraj
No.19/10, Numbulier St.,
Kondithope,
Chennai – 600 079

... Judgment Debtor/Defendant

Execution Petition praying that this Hon'ble Court be pleased to direct the Judgement Debtor to handover all original documents such as original patta No.1119/1973 dated 24.05.1974, Original Parent Document No.947 of 1959 dated 15.05.1959, sale deed in favour of the Petitioner/Decree Holder's vendor and also the Petitioner/Decree Holder's sale deed Registered document No.758 of 1973 dated 10.09.1973 along with by cancelling the Registered document No.1177 of 2009 dated

23/11/2009 on the file of Sub Registrar, Sowcarpet executed by the Petitioner/Decree Holder in favour of the defendant failing which this Hon'ble Court may be pleased to direct the Sub Registrar, Sowcarpet Registrar Office, Chennai to cancel the document No.1177 of 2009 dated 23.11.2009 executed by the Petitioner/Decree Holder in favour of the Judgment Debtor/Defendant under Order XXI Rule 34 of C.P.C.

Execution Petition coming on this day before this Court for hearing, the Court made the following order:-

1. This execution petition is filed by the decree holder to execute the decree to direct the judgment debtor to handover all the original documents such as original patta No.1119/1973 dated 24.05.1974, original parental document No.947 of 1959 dated 15.05.1959, the sale deed in favour of the decree holder's vendor and the sale deed registered as Doc.No. 758 of 1973 dated 10.09.1973 in favour of the decree holder by cancelling the registered Doc.No.1177 of 2009 dated 23.11.2009 on the file of the Sub Registrar, Sowcarpet.

2. The decree passed in this suit is based on compromise. Both parties went on compromise and the decree was passed in terms of compromise as follows.

“That the plaintiff herein, agreed to pay a sum of Rs.75,00,000/- (Rupees seventy five lakhs only) towards the full and final settlement to the defendant herein.

2. That the defendant herein agreed to cancel the mortgage deed executed on

23.11.2009 (Document No.1177 of 2009), SRO, Sowcarpet, on receipt of the amount.

3. That the time granted for the payment is three months from 28.08.2018.

4. That by signing this agreement the parties hereto state that they have no further claims or demands against each other with respect to C.S. No.737 of 2011 and all disputes and differences in this regard have been amicably settled by the parties hereto through the process of conciliation/Mediation.

5. That the O.A. Nos.906 & 907 of 2011 do stand closed.

6. That there shall be no costs of this suit”.

3. Since the judgment debtor did not obey the decree and not came forward to cancel the document this execution petition has been filed by the decree holder and sought prayer in the execution petition to direct the judgment debtor to handover the original documents and also to cancel the registration of mortgage deed. It is pertinent to say that there is no direction in the decree as to the delivery of original documents. It is no where mentioned or ordered in the decree that the judgment debtor has to handover the original documents to the decree holder. Further it is specifically mentioned in the decree that they have no further claims or demands against each other. The decree was ordered only to pay the amount of Rs.75 lakhs within three months.

4. But, the execution petition was filed by the decree holder to execute the decree not only for the cancelling of the document but also an additional prayer

that judgment debtor has to handover the parental documents which is not ordered in the decree. The judgment debtor filed a counter stating that he did not receive the original documents and there is no purpose for him to hold original documents. Still to avoid further litigation in future this Court after inquiry ordered the judgment debtor to produce the original documents if any in his custody. This Court also granted some time to judgment debtor for production of the documents and to cancel the document. But the judgment debtor did not come forward to cancel the document. Therefore this Court directed SRO to cancel the document and further issued show cause notice to judgment debtor. The judgment debtor appeared before this Court and represented that he is not in possession of the documents. This Court recorded the same and directed the judgment debtor to file an affidavit to that effect. In the affidavit, the judgment debtor has stated that he is not in a possession of the original documents and there is no purpose of him in holding the original documents since he is going to withdraw the amount deposited in the court. Further in his affidavit, the judgment debtor undertook to return the original documents if found in due course. The reasons stated by the judgment debtor was accepted by this Court, and adjourned the case for further proceedings regarding cancellation of documents.

5. Since the judgment debtor failed to cancel the documents, this Court

directed the Sub Registrar to cancel the documents and it was cancelled. The same is reflected in encumbrance certificate and the decree holder counsel also admitted the same. There is no direction in the decree directing the judgment debtor to handover the documents to the decree holder. Hence, such a prayer in the execution petition cannot be granted by the execution court. The execution court can execute the decree as it is only and it cannot go beyond the decree. Still, this Court took effort to settle the matter amicably and accordingly got an undertaking from the judgment debtor.

6. The additional prayer sought for by the decree holder in the execution petition is not ordered in the decree of the Court. Therefore, such a relief cannot be executed by this Court. Hence, warrant of arrest as prayed for by the decree holder cannot be granted. This Court being an execution Court cannot go beyond the decree. Already the document has been cancelled and the decree has been executed. Therefore, this execution petition is terminated.

Sd./-MASTER
26/11/2019

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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EVK 16/12/2021