

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.2017 of 2016

1.Pappa
2.Mani

... Petitioners

Vs.

1.The District Collector,
Collectorate,
Salem.

2.The Tahsildar,
Sankari Taluk,
Sankari,
Salem.

3.Packiammal
4.Minor Venkatesh

... Respondents

Prayer :- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the Fair and Decreetal Order of the District Munsif Court at Sankari, dated 26.02.2016 in E.P.No.9 of 2007 in O.S.No.20 of 2001.

For Petitioners	:	Mr.P.Valliappan
For R1 & R2	:	Mr.S.Jaganathan, Government Advocate (Civil Side)
For R3	:	No Appearance

ORDER

The Civil Revision Petition arises out of the fair and decreetal order dated 26.02.2016 made in E.P.No.9 of 2007 in O.S.No.20 of 2001 on the file of the District Munsif Court, Sankari, thereby dismissing the Execution Petition on the ground of limitation.

2. The petitioners are the plaintiffs. The petitioners have filed a suit for Mandatory Injunction directing the respondents to issue Ryotwari Patta and the same was decreed in favour of the petitioners by Judgment and Decree dated 25.06.2003. Thereafter, the petitioners sent a representation dated 17.05.2005 to the respondents requesting them to comply with the order passed by the Court below.

3. Admittedly, the re-exists an exparte decree even till today and the respondents did not take any steps to set aside the exparte decree. On 02.03.2007, the petitioners have filed an Execution Petition to execute the Judgment and Decree as against the respondents herein. The Court below dismissed the Execution Petition on the ground of limitation, since

under Article 135 of the Limitation Act, to execute the Mandatory Decree the limitation is 3 years. Admittedly, the Execution Petition was filed beyond 3 years and therefore, it was dismissed.

4. The learned counsel for the petitioners would submit that they were under the bonafide impression that the limitation starts only from the representation dated 17.05.2005 and as such the Execution Petition is very much maintainable. Further, he would submit that the exparte decree is in force even till today and the respondents did not take any steps to set aside the same.

5. Per contra, the learned counsel for the respondents would submit that the suit itself was not maintainable. Since, they have filed a suit for mandatory injunction directing the respondents to issue Ryotwari Patta and which have already been settled. The Trial Court rejected the plaint as against which they ought to have filed an appeal before the District Revenue Officer. Instead of filing an appeal, the plaintiffs simply filed a suit and hence the suit itself was not maintainable.

6. Heard Mr.P.Valliappan, learned counsel appearing for the petitioners and Mr.S.Jaganathan, learned Government Advocate (Civil Side) appearing for Respondents 1 and 2.

7. The petitioners have filed a suit for Mandatory Injunction directing the respondents to issue Ryotwari Patta in respect of the suit schedule mentioned property. After receipt of the summons, the respondents did not appear before the Court below and they have accepted the patta and an exparte decree was passed on 26.02.2016. Though, the petitioners also sent a representation on 17.05.2005 to comply with the order passed by the Court below, the petitioners failed to file an Execution Petition within a period of 3 years and filed the Execution Petition only on 02.03.2007. Article 135 of the Limitation Act is follows :

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
135. For the enforcement of a decree granting a mandatory injunction	Three years	The date of the decree or where a date is fixed for performance, such date

8. Accordingly, under Article 135 of the Limitation Act, to

execute the Mandatory Decree the limitation is 3 years. Therefore, the trial Court has rightly dismissed the petition filed by the petitioners herein on the ground that the petitioners failed to produce original power of attorney deeds. This Court finds no infirmity or irregularity in the order passed by the Court below.

9. Considering the above, the petitioners are at liberty to approach the said Revenue Officials for the appropriate relief. With the above direction, the Civil Revision Petition is dismissed by confirming the order of the Trial Court dated 26.02.2016 made in E.P.No.9 of 2007 in O.S.No.20 of 2001. No costs.

05.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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G.K.ILANTHIRAIYAN,J,

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To

1. The District Munsif,
Sankari.

2.The District Collector,
Collectorate, Salem.

3.The Tahsildar,
Sankari Taluk,
Sankari, Salem.



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