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C.R.P.(NPD).No.2001 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2001 of 2014
and M.P.No.1 of 2014

- 1.Sheik Maricar (died)
- 2.F.Izzath Beevi
- 3.S.Zarinabe
- 4.S.Mohamed Saleem
- 5.S.Mohamed Meharaj
- 6.S.Hasan Kuthoos
- 7.S.Sirajudeen

.. Petitioners

*(Petitioners 2 to 7 brought on record as
LRs of the deceased sole petitioner viz.,
Sheik Maricar, vide Court order dated
07.09.2021 made in C.M.P.No.6862 of
2021 in C.R.P.No.2001/2014)*

Vs.

- 1.Vijayakumari
- 2.Anuradha
- 3.Suryakumari
- 4.Jawaharbabu
- 5.Baskaran
- 6.Geetharani

.. Respondents



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Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 29.10.2013 made in E.A.No.8 of 2005 in E.P.No.94 of 2002 in O.S.No.245 of 1985 on the file of the Principal Sub Court at Puducherry.

For Petitioners : Mr.A.S.Kaizer

For Respondents : M/s.S.Subramanian

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 29.10.2013 made in E.A.No.8 of 2005 in E.P.No.94 of 2002 in O.S.No.245 of 1985 on the file of the Principal Sub Court at Puducherry.

2.The 1st petitioner is judgment debtor in O.S.No.245 of 1985 on the file of the Principal Sub Court at Puducherry. Pending Civil Revision Petition, he died and his legal heirs were impleaded as petitioners 2 to 7.



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One Anusuya Ammal @ Anusuya Bai filed O.S.No.245 of 1985 on the file of the Principal Sub Court at Puducherry, against the 1st petitioner for declaration of title and possession of the suit property after demolishing the superstructure put up by the 1st petitioner and for permanent injunction. The said suit was decreed, declaring title of plaintiff, but the learned Judge, in equity, directed the 1st petitioner to pay a sum of Rs.5,100/- to the plaintiff, being the value of the land. The plaintiff filed A.S.No.211 of 1988 and the 1st petitioner filed Appeal Suit No.13 of 1989. The learned I Additional District Judge, Pondicherry, by common judgment dated 13.11.1989 allowed A.S.No.211 of 1988, confirming the judgment and decree of the Trial Court in O.S.No.245 of 1985 dated 09.08.1988 with regard to title of the plaintiff and set aside the order of the Trial Court, directing the 1st petitioner to pay a sum of Rs.5,100/- to the plaintiff, being the value of the land and directed the 1st petitioner to deliver vacant possession of the suit property after demolishing the superstructure put up by him and dismissed the Appeal Suit in A.S.No.13 of 1989.



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3.Challenging the common judgment dated 13.11.1989 in A.S.No.211 of 1988 and Appeal Suit No.13 of 1989, the 1st petitioner filed S.A.Nos.34 and 35 of 1990. This Court, by the judgment and decree dated 31.07.2001, dismissed both the appeals. After dismissal of the Second Appeals, the decree holder/plaintiff filed E.P.No.94 of 2002 for delivery of vacant possession, after demolishing the superstructure put up by the 1st petitioner as per the decree passed in her favour. In the E.P., the 1st petitioner filed counter statement, stating that decree is in-executable. The 1st petitioner also filed E.A.No.8 of 2005 under Section 47 read with Sections 94 (e) and 151 of C.P.C., praying to dismiss the E.P., as the decree is in-executable and for appointment of Commissioner, well experienced Civil Engineer to find out whether demolition of suit property would cause damage to entire building of the 1st petitioner and value of the damage that may be caused to the said building. Pending E.P. and the said E.A., the decree holder died. The respondents herein were impleaded as petitioners in E.P. and respondents in E.A.No.8 of 2005.

4.Before the learned Judge, the 1st petitioner examined himself as



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P.W.1 and marked Ex.P1 - sale deed, by which the decree holder purchased the property. The respondents examined the 5th respondent as R.W.1 and marked 9 documents as Exs.R1 to R9. The learned Judge considering the materials placed before her and the fact that the suit reached up to Second Appeals before this Court and this Court dismissed the Second Appeals filed by the 1st petitioner, confirming the judgment and decree of the First Appellate Court, directing the 1st petitioner to demolish and handover the vacant possession of the suit property to the decree holder/ plaintiff, dismissed E.A.No.8 of 2005 in E.P.No.94 of 2002.

5. Against the said order dated 29.10.2013 made in E.A.No.8 of 2005 in E.P.No.94 of 2002 in O.S.No.245 of 1985, the 1st petitioner filed the present Civil Revision Petition. Pending Civil Revision Petition, the 1st petitioner died and his legal heirs were impleaded as petitioners 2 to 7.

6. The learned counsel appearing for the petitioners reiterated the averments in the affidavit filed in support of E.A. and submitted that the



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learned Judge failed to deal with the application filed under Section 47 of C.P.C., in proper perspective, which says that all the questions arising between the parties to the suit in which the decree was passed or their representatives, relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by separate suit. The learned counsel for the petitioners further contended that this Court appointed an Advocate Commissioner who inspected the suit property along with the Chartered Civil Engineer, stating that if stair case is demolished, the building of the petitioners will be damaged and prayed for allowing the Civil Revision Petition.

7.Per contra, the learned counsel appearing for the respondents referring to the judgment of this Court in Second Appeals and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioners as well as the respondents and perused the materials available on record.



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9.From the materials on record, it is seen that the plaintiff has obtained a decree of declaration of title and for demolition of superstructure put up by the 1st petitioner. This Court, by the judgment and decree dated 31.07.2001, dismissed the Second Appeal Nos.34 and 35 of 1990, filed by the 1st petitioner, confirming the decree of title of the plaintiff and also the judgment and decree of the First Appellate Court, directing the 1st petitioner to demolish and handover vacant possession of the suit property to the plaintiff/decreed holder. The 1st petitioner did not challenge the judgment and decree of this Court and the said judgment has become final. The Executing Court cannot go beyond the decree passed by the competent Court having jurisdiction. In the petition filed under Section 47 of C.P.C., the Executing Court can hold a decree inexecutable, only when a Court without jurisdiction passed a decree and if the decree is null and void *ab initio*. In the present case, the decree has been passed by the competent Court, especially by this Court, exercising the appellate jurisdiction by dismissing two Second Appeals filed by the 1st petitioner. In view of the same, it cannot be said that the decree now sought to be executed is passed by a Court without jurisdiction or such



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decree is nullity or void *ab initio*.

10.As far as the Commissioner's report is concerned, the Advocate Commissioner appointed by this Court inspected the suit property along with Chartered Engineer in the presence of 1st petitioner's Advocate. There is nothing on record to show that the Advocate Commissioner issued notice to the respondents 1 to 7 in E.A., intimating the date of inspection. The 5th respondent has filed objection to the Commissioner's report, bringing to the notice of this Court that the Advocate Commissioner inspected the suit property in their absence and therefore, the report of the Advocate Commissioner is invalid and not binding on the respondents. The 5th respondent also contended that the First Appellate Judge, considering the judgment of the First Additional District Judge, found that the District Judge made spot inspection of the suit property and noting the physical features, found that the 1st petitioner had put up another stair case in the other side, anticipating the demolition of stair case. Only after such inspection, the learned First Additional District Judge ordered demolition of stair case and ordered the 1st



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petitioner to deliver vacant possession after demolition, to the plaintiff/decree holder. This Court dismissed the Second Appeals filed by the 1st petitioner. In view of the judgment of the First Additional District Judge as well as this Court in the Second Appeals, the Advocate Commissioner's report in the Civil Revision Petition is not acceptable, especially when the Advocate Commissioner inspected the suit property in the absence of respondents and given contrary report to the finding of the learned Judge. For the above reason, there is no error in the order of the learned Judge warranting interference by this Court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.10.2021

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To

The Principal Subordinate Judge,
Puducherry.

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V.M.VELUMANI, J.

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