

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD)No.2795 of 2019

and C.M.P.No.18309 of 2019

(Through Video Conference)

Achanandayil Purushu

...Petitioner

Versus

Puthenpurayil Kamala

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 10.04.2019, made in E.A.No.31/2018 in E.P.No.27/2016 in O.S.No.2/2007 on the file of the Sub Court, Mahe.

For Petitioner : Mr.T.Sathiyamoorthy

For Respondent : Mr.Giridhar and Sai

ORDER

This Civil Revision Petition is filed challenging the order passed in E.A.No.31/2018 in E.P.No.27/2016 in O.S.No.2/2007 on the file of the Sub Court, Mahe on 10.04.2019.

2. The learned counsel for the petitioner submitted that the suit was filed in O.S.No.2/2007 seeking for the relief of permanent injunction, mandatory injunction and recovery of possession. This suit came to be decreed on 29.04.2016. Against the said judgment and decree, the petitioner preferred appeal in A.S.No.16/2016 and that came to be dismissed on 29.04.2016. The petitioner preferred second appeal in S.A.No.285/2018 and that was also dismissed on 25.06.2018. Now, the respondent filed E.P.No.27/2016 for demolishing the illegal construction put up by the petitioner and for delivery of possession of the portion encroached.

3. It is now the submission of the learned counsel for the petitioner that the petitioner is no way connected with survey No.73/1 and he has not made any encroachment in S.No.73/1. He is the owner of the property in S.No.73/2. On the guise of executing the decree passed in S.No.73/1, the respondent is now trying to take possession of property in survey No.73/2. That is the reason, he filed E.A.No.31 of 2018, under Section 47 of the Civil Procedure Code for adjudicating the claims with regard to the execution of decree.

4. This petition was contested by the respondent alleging that the petitioner has not taken any stand with regard to the claim that the property in survey

No.73/2 belongs to him and it is a new plea intended, only for the purpose of filing the petition with a view to protract the proceedings.

5. The learned Sub Court, Mahe considered the rival submissions and perused the records and dismissed the petition. Against the said dismissal, the present Civil Revision Petition has been filed.

6. The learned counsel for the petitioner reiterated his submissions made in the petition filed under Section 47 of the Civil Procedure Code to state that his property is covered in S.No.73/2. The execution petition is filed to execute the decree in S.No.73/2 claiming that the property comes under survey No.73/1. It appears that this particular plea has not been taken by the petitioner either before the Trial Court or before the Appellate Court or in the Second Appeal. All the three Courts have concurrently found that the respondent is entitled for the relief claimed and accordingly, decreed the suit. It is also brought to the notice of this Court that when the suit was pending before the trial Court, an Advocate Commissioner was appointed along with the Surveyor. The Surveyor had also filed a report. The Courts have also taken into consideration the report of the Advocate Commissioner, Surveyor's report and also the materials filed,

documents and oral evidences produced in support of the parties and the learned Sub Court, Mahe considered that the respondent is entitled for the decree as prayed for.

7. The learned Sub Court, Mahe has clearly found that the petition was filed to drag on the execution proceedings and to avoid the delivery of the said property. When the petitioner has not taken the plea now he has taken before the Trial Court, it is not open to him to take the same plea when the matter is pending for execution. All the three Courts have found against the petitioner.

8. The learned Sub Divisional Magistrate, Mahe, considered all these aspects and rightly dismissed the petition under law Section 47 of the Civil Procedure Code. Therefore, this Court finds no reason to interfere with the orders of the learned Sub Divisional Magistrate, Mahe and the order of the lower Court stands confirmed. The learned Sub Divisional Magistrate, Mahe is directed to ensure that the decree is executed in terms of the decree already passed.

9. With the above directions, this **Civil Revision Petition stands Dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2021

Index: Yes/ No

Speaking Order / Non-Speaking Order

sts/jai

To:

The Sub Divisional Magistrate,
Mahe.



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G.CHANDRASEKHARAN, J.,

sts/jai



Order made in
C.R.P.(PD)No.2795 of 2019

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15.09.2021