

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

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

CRP.PD.No.1038 of 2017 and
CMP.No.5058 of 2017

Manikandan

..Petitioner

Vs.

1.M.Kamalakannan

2.M.Gopal

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to strike off the suit in OS.No.1171 of 2015 on the File of the I Assistant City City Court at Chennai.

For Petitioner : Mr.P.Valliappan

For Respondents : No Appearance

ORDER

This civil revision petition is filed to strike off the plaint in OS.No.1171 of 2015 on the file of the I Assistant City City Court at Chennai

2. The learned counsel for the petitioner would submit that the respondents are the plaintiffs and the petitioner is the defendant. The respondents filed suit for permanent injunction in respect of property admeasuring 210 sq.ft. out of 1870 sq.ft. situated at door No.55, Beemanna Mudali Street, Chennai. The petitioner originally filed suit in respect of total extent of the property comprised in survey No.3624/2 bearing Door No.55, Beemanna Mudali Street, Chennai-18 bounded on north by Manavalammil Bajanai Mandapam, east by Beemanna Mudali Street, south by property belong to Dhandapani and Natarajan on the west by property of Venkatram Iyer for recovery of possession as against the respondents herein in OS.No.7479 of 1994 on the file of the XVII Assistant City Civil Court, Chennai and the same was decreed by the judgment and decree dated 10.11.2008. Aggrieved by the same, the respondents filed appeal suit and the same was dismissed and confirmed the judgment and decree passed by the trial court. Aggrieved by the said order, they also went upto Hon'ble Supreme Court of India and confirmed the judgment and decree passed by the trial court.

3. He further submitted that on the strength of the decree, the petitioner filed EP.No.1901 of 2012. While pending EP, the

respondents also filed review application in RA.No.166 of 2011 in SA.No.576 of 2011. The same was also dismissed by this Court by the judgment dated 14.03.2014. In fact, the respondents also filed petition for appointment of advocate commissioner raising objection that the suit property admeasuring only 1660 sq.ft, in which the respondents possessed 210 sq.ft excessly and as such the decree cannot be executed. However, the said petition was allowed and aggrieved by the same, the petitioner filed civil revision petition in CRP.No.2242 of 2015 before this Court and the same was allowed by order dated 24.01.2020. At that juncture, the respondents again filed the present suit for permanent injunction in respect of the same property. It is nothing but relitigation and it would amount to abuse of process of law. Therefore, the plaint is liable to be struck off.

4. The learned counsel who appeared on behalf of the respondents on earlier occasions submitted that already he had given change of vakalat to the respondents. On receipt of the same, the respondents even till today failed to engage any new counsel on record. Though the respondents received change of vakalat, no one appeared on behalf of the respondents before this Court in person or through pleader.

5. Heard Mr.P.Valliappan, the learned counsel for the petitioner.

6. The petitioner filed suit for recovery of possession in respect of the suit property and the same was decreed. The said decree was confirmed upto the Hon'ble Supreme Court of India. In fact, the respondents filed review in RA.No.166 of 2011 in SA.No.576 of 2011 and the same was also dismissed by order dated 14.03.2014. At that juncture, the respondents raised the same plea in the execution petition stating that in respect of 210 sq.ft. in the same property is possessed by them and there is no decree for the said property and filed petition in EA.No.1829 of 2015 in EP.No.1901 of 2012. However, the said petition was allowed by the execution court and aggrieved by the same, the petitioner filed civil revision petition before this Court in CRP.No.2242 of 2015 and this Court by order dated 24.01.2020 allowed the civil revision petition, wherein it is observed as follows:

8. Admittedly, the suit was for recovery of possession of 1660 square feet of land, however, with specific boundaries. The suit was decreed as prayed the respondents lost their case even before the Hon'ble Supreme Court. Thus,

the decree has become final. The review application filed by the respondents also came to be dismissed by this court. In all those proceedings, the respondents never raised the plea with regard to the extent of the property in question. For the first time, only after the petitioner filed an application for delivery of possession through executing court, the respondents came out with the application under revision for appointment of Advocate Commissioner for the purpose of measuring and demarcating the suit property to enable the petitioner to take possession of 1660 square feet of land. This plea was earlier negated by the executing court and the same was confirmed by this court in the earlier revision petition filed by the C.R.P.No.2242 of 2015 respondents in C.R.P.No.2953 of 2014 by order dated 15.07.2014. The relevant portions of the order read as follows:

"2. No notice is necessary to the respondents as this court is convinced to direct the Executing Court to execute the Execution Proceedings and no prejudice would cause to the respondents. Hence, notice to the respondents is dispensed with.

3. Taking into consideration of the fact that the Original Suit was filed in the year 1994; the same was confirmed by this Court in Second Appeal No.576 of 2011 on 21.06.2011 and the Review Application filed by the respondents in R.A.No.166 of 2011 was dismissed on 14.03.2014, there is no

occasion for the trial court to keep the Execution Proceedings which was filed in the year 2012 and is pending without any disposal.

4. It is to be noted that no Appeal has been filed against the Judgement of this Court made is S.A.No.576 of 2011 dated 21.06.2011 and it attained finality by dismissal of the Review Application.

5. The Review Application filed before this court was dismissed as early as on 14.03.2014 and the order copy was made ready on 10.04.2014. Though three months period have lapsed, no appeal was filed before the Hon'ble Supreme Court. Unless there is any stay order by the Hon'ble Supreme Court, the Executing Court cannot postpone the delivery.

6. In view of the same, the trial court is directed to pass appropriate orders, ordering delivery of possession to the petitioner, within a period of three weeks from the date of receipt of a copy of this order."

9. In the above circumstances, once this court had already concluded that the executing court cannot go beyond the decree and the petitioner is entitled to take possession as

per the schedule mentioned in the decree, the executing court ought not to have allowed the application for appointment of Advocate Commissioner for the purpose of measuring and demarcating the property for delivery of possession of the property. Thus, this court is of the considered view that the order passed by the executing court is totally against the order earlier passed by the executing court which was also confirmed by this court in C.R.P.No.2593 of 2014. Therefore, the order impugned in this revision petition requires interference and the revision petition succeeds accordingly.

7. Once this Court had already concluded that executing court cannot go beyond the decree and the petitioner is entitled to take possession as per the schedule mentioned in the decree, the executing court ought not to have allowed the petition for appointment of advocate commissioner for the purpose of measuring and demarcate the property for delivery of possession of the property. Therefore, the respondents' plea was rejected by this Court and for the very same averment and plea, now the respondent filed the present suit for bare injunction in respect of the very same property. Therefore, it is nothing but relitigation for the same property and it amounts to clear abuse of process of law and it cannot be sustainable.

8. Accordingly, this civil revision petition is allowed and the plaint in OS.No.1171 of 2015 on the file of the I Assistant City Court at Chennai is hereby struck off. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.03.2021

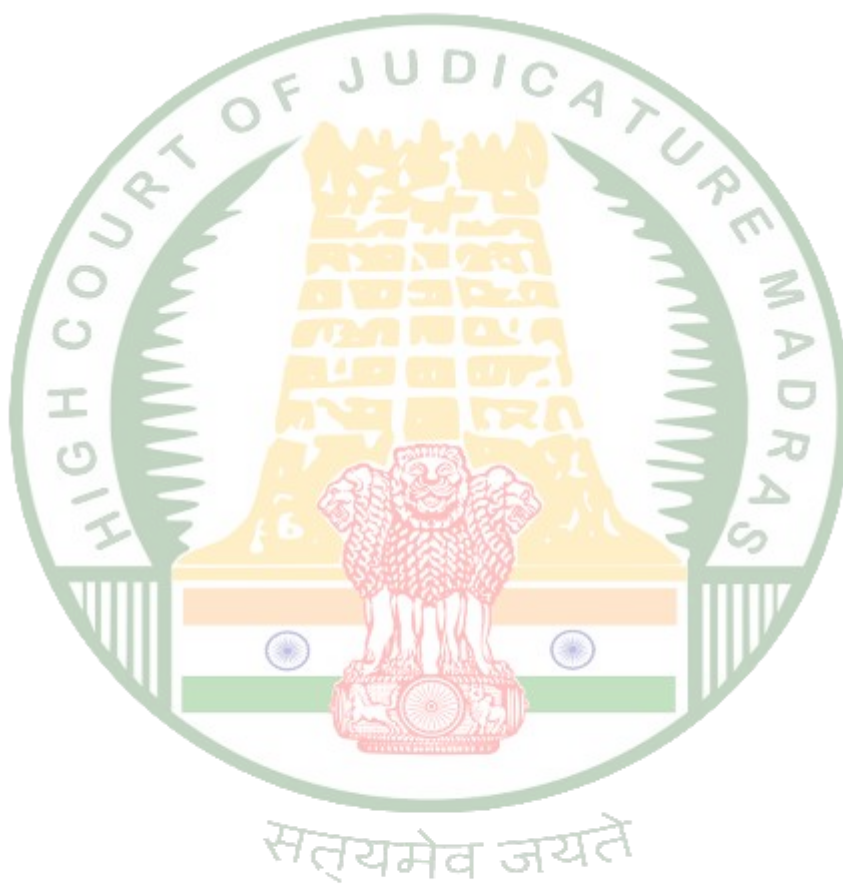
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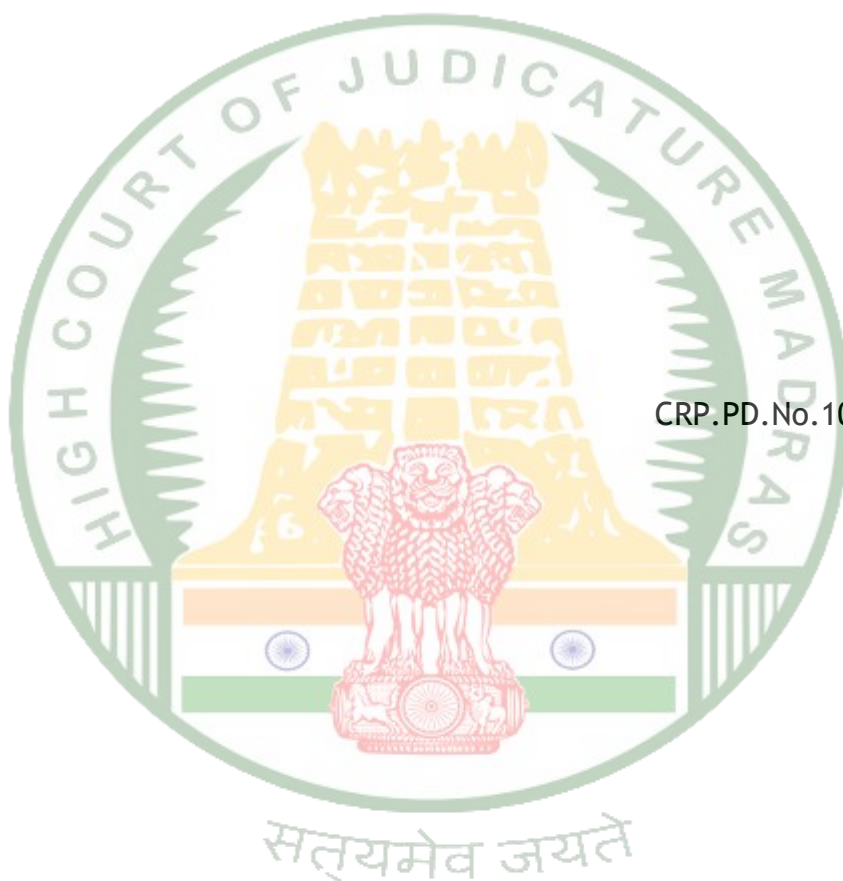
The I Assistant City Court
at Chennai.



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G.K.ILANTHIRAIYAN,J.

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