

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.07.2021

PRONOUNCED ON: 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 3237 of 2019

K.V. Lakshmipathy (Died)

1. Mrs. K.V. Meera
2. Mrs. Jayanthi
3. K.V. Saroja
4. N.N.Savithri
5. Ethiraj

... Appellants/Petitioners/Judgment
Debors/Defendants 1 to 7

-Vs-

1. J.Senthamizh Selvi

... 1st Respondent/1st Respondent/Decree Holder/Plaintiff

2. N.Kasi Viswanathan

... 2nd Respondent/2nd Respondent/8th Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 20.08.2019 made in C.M.A.No. 9 of 2019 passed by the First Additional District Judge, Thiruvallur, confirming the order dated 01.02.2019 made in E.P.No. 7 of 2011 in M.C.C O.S.No. 6871 of 1990 passed by the District Munsif Court, Thiruvallur.

For Petitioners : No appearance

For 1st Respondent: R.Maran

For 2nd Respondent: Died (steps not taken)

ORDER

The Civil Revision Petition has been filed by the appellants in C.M.A. No. 9 of 2019 questioning the judgment dated 20.08.2019 passed by the 1st Additional District Court, Tiruvallur dismissing the appeal.

2. The 1st respondent herein had filed O.S. No. 6871 of 1990 before the VII Assistant City Civil Court against the revision petitioners seeking a judgment and decree in the nature of a declaration that respondent/plaintiff has got a right to access her site through the Inner Ring

Road, and for permanent injunction restraining from putting up any construction and committing trespass, and for mandatory injunction to remove illegal construction put up. Two of the defendants died pending the proceedings and the 8th defendant has been shown as the 2nd respondent herein.

3. It is the case of the 1st respondent herein in O.S. No. 6871 of 1990, that she had purchased a house site measuring 5 ½ cents bearing plot no. 13 in S. No. 57/1 part in Koyambedu Village, Nungambakkam Egmore Taluk, Chennai, by a registered sale deed dated 14.12.1987 from the 2nd respondent/8th defendant. The revision petitioners/defendants had also purchased adjoining plots of land. It was claimed that the revision petitioners/defendants had, unauthorisedly put up a 10 feet wall and had also laid foundation for construction of building encroaching into the road, thereby obstructing the 1st respondent/plaintiff from having free access to her house site.

4. The defendants entered appearance in the suit through Counsels. They did not file written statement. They were set exparte and an exparte decree was also passed on 13.01.1991. The 1st respondent/plaintiff was examined as P.W.1 and Exs. A1 to A9 were also marked.

5. The revision petitioners/defendants filed I.A. No. 1981 of 1992 to set aside the exparte decree. That was dismissed after 4 years for non prosecution on 30.10.1996.

6. The revision petitioners/defendants, after 15 further years, filed I.A. No. 15576 of 2011 u/s 5 of the Limitation Act, 1963 to condone the delay of 5231 days to restore I.A. No. 1981 of 1992. That application was dismissed after 1 further year on 22.11.2012.

7. The revision petitioners/defendants then filed C.R.P. (NPD) No. 4485 of 2012. That was also dismissed after 1 year on 26.11.2013.

8. The 1st respondent/plaintiff had filed E.P. No. 1071 of 2007 seeking civil arrest for revision petitioners/defendants for disobeying the

directions in the judgment in the suit by violating the grant of permanent injunction by putting up a hut in the road.

9. The revision petitioners/defendants/judgment debtors then shifted their residence to Tiruvallur District.

10. The 1st respondent/plaintiff/decreed holder then obtained orders to transmit E.P. No. 1071 of 2007, to the jurisdictional District Munsif Court at Tiruvallur. It was transmitted and renumbered as E.P. No. 7 of 2011.

11. After entering appearance in E.P. No. 7 of 2011, the revision petitioners/judgment debtors filed E.A. No. 19 of 2012 u/s 47 of CPC, questioning executability of the decree in O.S. No. 6871 of 1990. After 6 years, E.A. No. 19 of 2012 was dismissed for non prosecution on 31.08.2006.

12. The revision petitioners/judgments debtors then filed E.A. No. 18 of 2016 to set aside that dismissal order. The said application was allowed after 1 year on 12.04.2017 and E.A. No. 19 of 2012 was restored on file.

13. Again the revision petitioners/judgment debtors did not prosecute E.A. No. 19 of 2012, and it was again dismissed for non prosecution after 1 further year on 12.06.2018.

14. The revision petitioners/judgment debtors then filed E.A. No. 67 of 2018 to restore E.P. No. 19 of 2012. This application was dismissed by order dated 16.08.2018. The District Munsif, Tiruvallur, then took up E.P. No. 7 of 2011 and after examining the records, reserved the same for passing orders.

15. The revision petitioners/judgment debtors then filed E.A. No. 97 of 2018 to re-open the Execution Petition for hearing their arguments. That application was allowed on 08.11.2018.

16. Arguments were not advanced on the side of the revision petitioners/judgments debtors. The District Munsif however granted time to atleast file counter in the Execution Petition. Counter was also not filed, and the revision petitioners/judgment debtors were set exparte on 11.01.2019 and a detailed order was passed in E.P. No. 7 of 2011 on 01.02.2019 directing arrest of the revision petitioners/judgment debtors.

17. The revision petitioners/judgment debtors were then produced before the District Munsif Court on 27.02.2019, and they executed a Muchalika undertaking not to violate the decree of the Court in O.S. No. 6871 of 1990 dated 13.01.1992.

18. The revision petitioners/judgment debtors then filed another Interlocutory Application seeking to set aside the order dated 01.02.2019. That application was returned on 10.04.2019 on the ground of maintainability.

19. The revision petitioners/judgment debtors then filed another Interlocutory Application to stay the order dated 01.02.2019 in E.P. No. 7 of 2011. That application was also returned on 10.04.2019 on the ground of maintainability.

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20. Finally, on the same date, on 10.04 2019, the District Munsif Court, Tiruvallur again passed orders in E.P. No. 7 of 2011 directing re-arrest of the revision petitioners/judgment debtors for violating both the

decree dated 13.01.1992 in the suit and the undertaking dated 27.02.2019 given while executing the muchalika.

21. Questioning that order, the revision petitioners/judgment debtors then filed C.M.A. No. 9 of 2019 before the 1st Additional District Court, Tiruvallur.

22. A detailed and well considered judgment answering all points raised on behalf of the revision petitioners/judgment debtors/appellants was passed on 20.08.2019.

23. The learned Judge observed that the decree in O.S. No. 6871 of 1990 dated 13.01.1992 had attained finality. Application to set aside the decree had been dismissed and the revision preferred before this Court had also been dismissed. It was also stated, on perusal of the records that the Execution Petition filed in the City Civil Court, Chennai had been lawfully transmitted to the District Munsif Court, Tiruvallur. The jurisdiction of the District Munsif Court was also affirmed, since the revision petitioners/judgment debtors had shifted their residence to Tiruvallur to

evade orders from the City Civil Court, Chennai. The filing of the Execution Petition seeking arrest of the judgment debtors was also held to be lawful. The maintainability of the Execution Petition was affirmed. It was also held that the decree was executable, and the acquisition of a portion of the larger extent of land by the CMDA would not affect the right, title or interest of the decree holder. It was held that the judgment debtors had deliberately and intentionally disobeyed the directions in the decree and therefore held that there was no reason to interfere with the order of the trial Court and therefore dismissed the appeal by judgment dated 20.08.2019.

24. This Revision has been filed against that judgment.

25. The facts narrated above would reveal the supine indifference the revision petitioners had shown to the sanctity of judicial proceedings. The suit was instituted in the year 1990. It was decreed in 1992. Applications were filed to set aside the decree. A delay of 5231 days was sought to be condoned. An application filed in that regard was dismissed. The revision filed was dismissed. The suit kept meandering around for 20 years. Finally execution petition was filed after 20 years. That was effectively protracted for 10 years.

26. In *Rahul S. Shah vs Jitendra Kumar Gandhi*, 2021 SCC

OnLine 341, the Hon'ble Supreme Court observed as follows :

“26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”

27. In *Ghan Shyam Das Gupta v. Anant Kumar Sinha*, (1991) 4

SCC 379 at page 382, the Hon'ble Supreme Court held as follows :

“8.... So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better....”

28. In the Memorandum of Grounds of Revision, the revision petitioners have cited various judgments, primarily touching on the executability of a decree. But as held in ***Ghan Shyam Das Gupta v. Anant Kumar Sinha, (1991) 4 SCC 379***, (referred supra), *“So far the question of executability of a decree is concerned, the Civil Procedure Code contains*

elaborate and exhaustive provisions for dealing with it in all its aspects.....

The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes,... ”. Thus, I hold the revision petition is an exercise in vain and has been filed more out of desperation.

29. The revision petitioners had shunned participation in Court proceedings, when their presence was required. They have stretched and spun their yarn a little too long. They will have to suffer the order passed by the Execution Court.

30. I find no reason to interfere with either the well considered reasons given by the learned 1st Additional District Judge or by the learned District Munsif. They have both carefully perused the records. They have been more than a little indulgent to the cause of the revision petitioners. But, the revision petitioners will have to fall owing to their own acts of inaction and deliberate violation of a lawful decree.

31. The Revision fails and is accordingly dismissed with costs of Rs. 50,000/- (Rupees Fifty thousands only).

28.07.2021

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking



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C.V.KARTHIKEYAN, J.

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