

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.09.2021	Orders pronounced on 25.10.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.3537 of 2019
and
C.M.P.No.23236 of 2019

Sarath Kakumanu

... Petitioner

Vs

1. Veerappan Arunachalam
2. Priya Asokan

... Respondents

Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order dated 09.09.2019 passed in E.A.No.1776 of 2017 in E.P.No.1191 of 2013 on the file of IX Assistant City Civil Court, Chennai.

For Petitioner

..

Mr.E.Om Prakash
Senior Counsel
for
M/s.J.B.Abithabanu

For Respondents

..

Mr.AR.L.Sundaresan
Senior Counsel
for
M/s.Anirudh Krishnan

ORDER

This Civil Revision Petition is filed against the order passed in E.A.No.1776 of 2017 in E.P.No.1991 of 2013 on the file of IX Assistant City Civil Court, Chennai.

2. E.A.No.1776 of 2017 was filed under section 47 CPC to rectify the survey number of the schedule property as 3958/3 instead of 3958/2 as described in the decree dated 17.10.1995. Respondents' predecessor Jayalakshmi Ammal filed a suit in O.S.No.9974 of 1992 against the petitioner for permanent injunction restraining the petitioner and his agents or anybody claiming through him in any manner using the private road owned by Jayalakshmi Ammal, comprised in R.S.No.3958/2, and for mandatory injunction directing the petitioner to remove the iron gate put up in the eastern compound wall of the plaintiff marked in yellow colour in the sketch annexed and to restore the wall in original state. The suit was decreed on 17.10.1995. There was no steps taken for setting aside the exparte decree or challenging the exparte decree by way of appeal. Therefore, the exparte decree passed in O.S.No.9974 of 1992 became final. E.P.No.1191 of 2013 was filed under Order XXI Rule 32

CPC for arresting the petitioner and detain him in civil prison to enforce the decree of permanent injunction.

3. Jayalakshmi Ammal purchased the land bearing S.No.3958/3 to an extent of 92 grounds from Mrs.Ravai kannammal and Mrs.Tiripurasundari ammal and Mrs.Shantha kumari. She divided 92 grounds into portions and sold some portions to Consulate General of USA and retained remaining for herself. She laid a private road ie., suit private road for her own use and she granted right of way over the said private road to Consulate General of USA as per sale deed dated 05.09.1966. This private road lies at the eastern most of her property in S.No.3958/3 and lies immediately to the east of Door Nos.12 & 13 Bishop Garden. This is shown as red mark in the sketch annexed in the plaint. On the further east, the property of the petitioner in R.S.No.3958/2 situates. Due to typographical error, survey number of the suit property was wrongly mentioned as 3958/2 instead of 3958/3. Therefore, the petition in E.A.No.1776 of 2017 was filed for making rectification in the survey number in the decree as 3958/3 instead of 3958/2. On considering the rival submissions, learned IX Assistant

Judge allowed the petition. Against the said order, the petitioner preferred this Civil Revision Petition.

4. Learned senior counsel for the petitioner submitted that the exparte decree was passed on 17.10.1995. Jayalakshmi Ammal died on 27.08.2005. She has not taken any steps for enforcing the decree while she was alive. Her legal representatives had filed a petition to enforce the decree without filing a formal petition to recognise them as legal representatives of the deceased Jayalakshmi Ammal. No Execution Petition was filed for enforcing the mandatory injunction relief granted. E.A.No.1776 of 2017 is filed 22 years after passing of exparte decree for modifying the Survey number. Arrest EP filed is barred by limitation. A subsequent suit filed in O.S.No.1578 of 2014 was withdrawn by the respondents. Amendment of description of property cannot be entertained at this distant point of time. E.A.No.1776 of 2017 was reserved for orders and then reopened for clarification. After reopening, without giving opportunity to the petitioner, order was passed. This is obviously wrong. Therefore, learned counsel for the petitioner prayed for setting aside the order of learned IX Assistant Judge, City Civil

Court, Chennai and for dismissing the petition filed in I.A.No.1776 of 2017.

5. Learned senior counsel for the respondents countered the submissions made by the learned senior counsel for the petitioner and submitted that rectification/amendment now sought is only a clerical and typographical error. The survey number of the suit property was wrongly typed as 3958/2 instead of 3958/3. There is no dispute with regard to the fact that the respondents are the owners of the property in S.No.3958/3 and the petitioner is the owner of the property in S.No.3958/2. In the schedule of property, the suit property was clearly described with four boundaries and the private road was shown in red colour in the sketch. Thus, there is no dispute with regard to the identification of the property. The only mistake committed was the wrong description of survey number. The private road can be identified with the help of the sketch. In the settlement deed executed in favour of the petitioner, the property of the respondents was shown as western boundary of the petitioner's property in S.No.3958/2. This document makes it clear that on the west of the petitioner's property, the property of

the respondents situate.

6. It is further submitted that it is not necessary to file a formal application for recognising the respondents as the persons entitled to prosecute the execution petition. The petitioner filed E.A.No.4236 of 2015 under Section 47 of CPC for dismissal of Execution Petition on the ground that the respondents have come forward with the EP without being recognised as successors intestate of the deceased decree holder. This petition was dismissed on 22.12.2016. Against the said order, petitioner preferred CRP.(NPD) No.2107 of 2018 and that was dismissed on 19.12.2018. In the said order, the issue with regard to discrepancy in survey number was raised. This Court negated the claim of the petitioner and dismissed the Civil Revision Petition. Petitioner preferred SLP before the Hon'ble Supreme Court. The grounds now raised had been raised in the grounds filed in SLP. The Hon'ble Supreme Court dismissed the petition and observed that 'needless to say, the execution proceedings must see a finality and should not become another prolonged battle as in the present case and thus, the Executing Court will endeavour to conclude the execution petition within a maximum period of six

months from the date of communication of the order'. Therefore, it is not open to the petitioner to challenge the order of the learned Executing Court.

7. The matter was reopened by learned Executing Court for hearing some clarifications with regard to some documents and on being clarified, order was pronounced. No further argument was advanced by the respondents. Therefore, the contention of the learned counsel for the petitioner that the petitioner was not given opportunity after reopening, has no merits. The dismissal of the suit in O.S.No.1578 of 2014 as withdrawn is not a ground for denying the relief now sought in the Execution Petition on the basis of the decree passed in favour of the petitioner.

8. It is already decided in the judgment reported in **2000 (II) CTC 199 in M.A.Raja ..vs.. S.Vedhantham Pillai and four others** that in a decree for interim prohibitory injunction, there is no limitation under Article 136 of Limitation Act for filing Execution Petition. As and when the prohibitory injunction is violated, the party can file Execution

Petition. The judgment reported in ***(2003) 2 SCC 330 in Pratibha Singh and another ..vs.. Shanti Devi Prasad and another*** is cited before me for the proposition that a successful plaintiff should not be denied of the fruits of the decree on the ground of certain defects in describing the property. Thus, the learned counsel for the respondents submitted and prayed that the suit property can be identified with the help of the sketch, specified in red colour marking and therefore, mere mistaken description of the survey number is not a ground for rejecting the claim of the respondents. The learned IX Assistant Judge has also rightly considered the matter and allowed the petition. He prayed for sustaining the order of learned IX Assistant Judge, City Civil Court, Chennai, and for dismissing the Civil Revision Petition.

9. Considered the rival submissions and perused the records.

10. From the records perused, the submissions made by both the parties, there are certain undisputed facts emerge. They are:-

(1) Petitioner is the owner of the property in S.No.3958/2 and respondents are the owners of the property in S.No.3958/3.

(2) True copy of the rough sketch filed along with the plaint in O.S.No.9974 of 1992 clearly described the properties of both the parties surrounded by Bishop Garden road.

11. The case of the respondents is that within the eastern extreme of the respondents' property, there is a private road formed by Jayalakshmi Ammal. It is a private road for the use of Jayalakshmi Ammal and the owners of the property in D.Nos.11,12,14, 15 and 16 and USA Consulate in Door No.13. There is a compound wall on both the sides of the private road. Petitioner's land situate on the further eastern side of compound wall on the eastern extreme of respondents' land. Petitioner has no right in the private road. However, the petitioner had put up iron gate in the eastern compound wall of the respondents and that necessitated the filing of the suit. The suit was decreed exparte on 17.10.1995. Petitioner has not taken any steps to set aside the exparte decree or file any appeal. Therefore, the exparte decree dated 17.10.1995 becomes final. Now the dispute is, in the plaint description of property, the survey number of suit property was wrongly given as S.No.3958/2 instead of S.No.3958/3. Whether this survey number can be corrected or

not is the dispute.

12. As rightly pointed out by the learned counsel for the respondents, in the judgment reported in **(2003) 2 SCC 330 cited supra**, it has been observed as follows:-

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case- which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account

of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC. ”

This observation makes it clear that a successful plaintiff should not be deprived the fruits of the decree, because of some defects in describing the property. Application can be filed under Section 152 or Section 47 CPC to correct the mistake. That was what precisely done in this case. Therefore, there is no doubt that respondents are entitled to make the correction in the decree as S.No.3958/3 instead of S.No.3958/2.

13. That apart, there is no dispute whatsoever as to the identity of the private road. This private road is clearly identified in the rough sketch filed along with the plaint as the red marked portion. It is also clearly described that it is the plaintiff's private road. The only mistake that had crept in is that survey number was wrongly mentioned as S.No.3958/2 instead of S.No.3958/3. Now, it is sought to rectify this defect by way of rectification/amendment. Following the aforesaid judgment of the Hon'ble Supreme Court, there is no doubt that the respondents can be permitted to rectify this defect by way of amendment.

14. The property of the respondents situates on the western side of the petitioner's property is fortified by the settlement deed executed in his favour on 31.05.2004. In the description of the property, the property on the west of S.No.3958/2 was shown as S.No.3958/3. The issue with regard to the description in the survey number of the property was also raised in Civil Revision Petition No.2107 of 2018 and that was rejected by this Court. The matter was taken to Hon'ble Supreme Court. It is seen from the grounds raised, most of the grounds now raised had already been raised before the Hon'ble Supreme Court and the Hon'ble Supreme Court had dismissed the SLP on 02.08.2021 with the observation extracted supra. It is also brought to my notice that the suit filed by the petitioner in O.S.No.915 of 2019 claiming his right of user in the disputed road seeking injunction against the respondents came to be struck off by this Court in Civil Revision Petition No.843 of 2019.

15. With regard to the question of limitation, it is held in the judgment reported in **2000 (II) CTC 199 cited supra** that when the decree is for prohibitory injunction and mandatory injunction, Article 136 alone has to be applied and not Article 135. This proposition applies

to this case also. As per Article 136 of Limitation Act, an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subjected to any period of limitation. As the legal representatives of the deceased Jayalakshmi Ammal, the respondents are entitled to file Execution Petition for enforcing the decree of perpetual prohibitory injunction, when it is violated.

16. With regard to the contention of the learned counsel for the petitioner that the petitioner was not given opportunity to argue the case after the case was reopened for clarification, it is seen from the 'A' diary proceedings that the hearing in E.A.No.1776 of 2017 was suo-motu reopened for clarification about the documents and was adjourned to 16.07.2019, 30.07.2019, 03.08.2019, 07.08.2019, 20.08.2019, 28.08.2019 and 30.08.2019. On 30.08.2019, it is noted that “*the decree holder side counsel present. Document clarification heard. Judgment debtor side arguments already heard. Judgment Debtor side documents are available for perusal. Orders on 09.09.2019.*” Then on 09.09.2019, E.A.No.1776 of 2017 was allowed. It is seen from 'A' diary proceedings that E.A.No.1776 of 2017 was reopened for clarification on

certain documents. On getting clarified from the decree holder's counsel, the matter was reserved 'for orders' and order was pronounced. It appears that no further argument was advanced by the learned counsel for the respondents/decreed holder. Therefore, submissions of the learned counsel for the petitioner that the petitioner was not given opportunity for advancing further argument cannot be accepted.

17. The submissions made by the learned counsel for the petitioner that no specific detail was given as to when and how the order was violated, there is no material to show that the judgment debtor was using the private road and violated the decree and there are no grounds made out for ordering arrest, are matters for enquiry in the Execution Petition. Whether any cause of action available for ordering arrest or not is a matter to be considered by executing court at the time of passing orders in the Execution Petition. The scope of this petition is very limited as to whether the rectification in the survey number can be entertained. Indeed it can. Under Order VII Rule 3 CPC, what is required for execution in respect of immovable property is that the plaint shall contain a description of the property sufficient to identify it, and in

case of such property can be identified boundaries or numbers in a records of settlement or survey, the plaint shall specify such boundaries or numbers.” It makes it clear that even in the absence of survey number, if the property can be identified with boundaries, execution can be ordered. Thus, for the reasons stated above, this Court finds no reason to interfere with the order of learned IX Assistant Judge, City Civil Court, Chennai and the order of the learned IX Assistant Judge, City Civil Court, Chennai, in E.A.No.1776 of 2017 in E.P.No.1191 of 2013 dated 09.09.2019 is confirmed.

18. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Mra

25.10.2021

Index : Yes
Internet : Yes / No
Speaking order : Yes / No

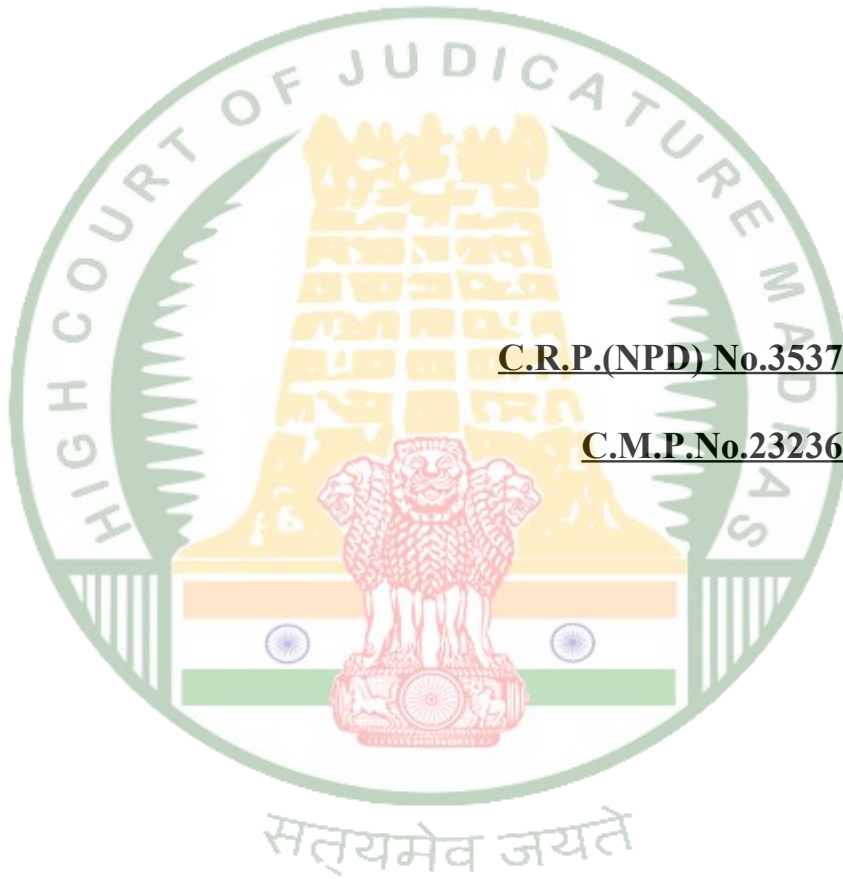
To,

1. The IX Assistant Judge, IX Assistant City Civil Court, Chennai.

C.R.P.(NPD) No.3537 of 2019
and
C.M.P.No.23236 of 2019

G.CHANDRASEKHARAN, J.

mra



order in
C.R.P.(NPD) No.3537 of 2019
and
C.M.P.No.23236 of 2019

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25.10.2021