

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P (NPD)No.2395 of 2017

and

C.M.P.No.11283 of 2017

1.Kannaiyan

2.Susila

..Revision Petitioners

vs.

Periyasamy

..Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to Set Aside the Fair and Decretal Order, dated 21.07.2015 in R.E.A.No.400 of 2014 against R.E.P. No.5 of 2014 in O.S.No. 316 of 2009 on the file of Additional District Munsiff Court, Namakkal.

For Revision Petitioners - M/S.S.Kalyanaraman

For Respondent - Mr.T.Dhanyakumar

ORDER

The present Civil Revision Petition has been filed, challenging the order passed by the Court below, in R.E.A.No.400 of 2014 in R.E.P.No.5 of 2014 in O.S.No.316 of 2009.

2. The facts, which are necessary for the disposal of this Civil Revision Petition could be briefly set out as hereunder:

i The defendants in the aforesaid Suit are the revision petitioners herein. The respondent/plaintiff filed the suit for the relief of mandatory and permanent injunction. The Trial Court, vide a judgment and decree, dated 03.03.2010, decreed the suit, as prayed for, wherein, the revision petitioners/defendants were set ex parte. Thereafter, the respondent/plaintiff filed R.E.P.No.5 of 2014, seeking for appointment of Advocate Commissioner to carry out the mandatory injunction, as per the suit decree.

ii) In the said Execution Petition, the revision petitioners were set ex parte on 05.03.2014. In order to set aside ex parte order, dated 05.03.2014, the revision petitioners/defendants filed R.E.A.400 of 2014. The Executing Court dismissed the said Application. Challenging the same, the present Civil Revision Petition is filed.

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3. The learned counsel appearing for the revision petitioners submits that, the revision petitioners have engaged an Advocate to conduct the case

on their behalf; the Advocate also got signatures from the revision petitioners and assured that he will conduct the case for the revision petitioners; and that, whenever they met the Advocate, he informed them that the case is still pending, subsequently, when they received notice from the Court below twice, they had shown the said notices to the Advocate, and despite the same, he informed the revision petitioners that the Court will issue notice at every stage and instructed them to give the said notices to him whenever they receive, and also got signatures in the vakalat, and he has also not informed about the further developments taken place in the Execution Proceedings. The revision petitioners came to know about the ex parte order, dated 05.03.2014, passed in R.E.P.No.5 of 2014 only when the Advocate Commissioner served notice on the revision petitioners. Immediately thereafter, the revision petitioners approached the Court and filed R.E.A.400 of 2014 to set aside the ex parte order, dated 5.03.2014.

3.1 Therefore, the learned counsel submits that due to the failure on the part of the Advocate to appear before the Executing Court, ex parte order, dated 05.03.2014 came to be passed against the revision petitioners

for no fault on their side, and the Court below, without considering the fact that the Advocate engaged by the revision petitioners acted against their interest, dismissed R.E.A.No.400 of 2014, by order, dated 21.07.2015.

3.2 The learned counsel for the revision petitioners fairly admitted the fact that the revision petitioners have also filed application in I.A.No.17 of 2015 in O.S.No.316 of 2009, to condone the delay of 1637 day in filing the application to set aside the ex parte decree, dated 03.03.2010. The said Application in I.A.No.17 of 2015 was dismissed by the Court below, vide order, dated 21.07.2015. Challenging the said dismissal, the revision petitioners also filed C.R.P.(PD) No.3812 of 201 and unfortunately, the said Revision Petition was also dismissed.

3.3 Therefore, the learned counsel submitted that, unless and until, the revision petitioners are provided an opportunity to make submissions in the Execution Petition, they would lose their rights. Further, the learned counsel submitted that there are some discrepancies in the measurement mentioned in suit schedule property and the same needs to be brought into

the knowledge of the Executing Court, for which purpose, they have to be heard. Hence, the learned counsel prayed for allowing the Revision Petition.

4. On the other hand, the learned counsel appearing for the respondent submitted that, the ex parte decree was passed in O.S.No.316 of 2009, on 03.03.2010 and the same was not challenged by the revision petitioners in any of the Court. Therefore, the measurement mentioned in the said decree holds good and beyond the measurement, the respondent/plaintiff is not going to claim anything. If there is any defect with regard to the measurement, the revision petitioners can very well raise their objections, which the Executing Court would consider on merit, as the Advocate Commissioner has not filed his report, as of now, and thus, by doing so, the revision petitioners rights is in no way going to be prejudiced. Hence, the learned counsel submits that there is no merit in the Civil Revision Petition and the same is liable to be dismissed.

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5. Heard the learned counsel appearing for both sides and perused the material available on record.

6. Originally, the suit in O.S.No.316 of 2009 was filed on 10.08.2009. In the said suit, ex parte decree came to be passed on 03.03.2010. To put the decree into execution, the respondent/plaintiff filed R.E.P.No.5 of 2014, wherein, an ex parte order, dated on 05.03.2014 was passed on account of the fact that despite services of notice, the revision petitioners failed to appear before the Executing Court. Therefore, the revision petitioners were set ex parte by order, dated 05.03.2014. To set aside the ex parte order, the revision petitioners filed R.E.A. No.400 of 2014, in R.E.P.No.5 of 2014, on 07.10.2014. The Executing Court, by order dated 21.07.2015, dismissed the R.E.A.No.400 of 2014. Challenging the said order, the present Revision Petition.

6.1 The only contention raised by the learned counsel for the revision petitioners is that, there are some discrepancies in the measurement, unless and otherwise, the impugned order is set aside and reasonable opportunity is afforded to the revision petitioners, their rights will get affected.

6.2 On perusal of the records, it appears that the revision petitioners have also filed an application to set aside the ex parte decree along with condone delay application. But the said application was dismissed by the Court below on 21.07.2015. Challenging the said order, the C.R.P.(PD)No.3812 of 2015 was filed and the same came to be dismissed on 03.12.2020.

6.3 Therefore, it is clear that the ex parte decree passed by the Court below is not challenged before any other Court, as of now, and the same holds good against the said ex parte decree, R.E.P.No.5 of 2014 was filed by the respondent/plaintiff.

6.4 The grievance of the revision petitioners is only with regard to the measurement. Once the decree has been passed, and whatever the measurement stated in the suit schedule property, it is the duty of the Executing Court to execute the decree, and they cannot, in anyway, change the measurement as described in the suit schedule. Even for the sake of argument, the contention of the revision petitioner is taken into

consideration, nothing is going to be altered in the decree. It could be inferred from the arguments advanced by the learned counsel for the revision petitioners that there were some defects in the measurement. The Executing Court cannot make the alleged defect, even if there is defect, it was already there, and it cannot be set right.

6.5. Further, the Advocate Commissioner appointed by the Executing Court issued notice to both the parties, if at all, if there is any discrepancies in the measurement of the suit schedule property, to which, the respondent/plaintiff is not entitled, certainly, the revision petitioners are entitled to make objections to the Advocate Commissioner and the said objections will be considered on merits by the Executing Court.

6.6. Under the aforesaid circumstances, I am of the view that there is no fault in the decision making process on the part of the Court below so as to interfere with the order passed by it. Accordingly, I find no merit in the Civil Revision Petition and the same deserves to be dismissed.

6.7. The learned counsel for the respondent/plaintiff brought to the notice of the Court that R.E.P.No.5 of 2014, is pending for the past seven years and therefore, sought for appropriate directions of this Court to consider and dispose of the R.E.P.No.5 of 2014, within the time as stipulated by this Court.

6.8. In view of the above submission, this Court hereby directs the Executing Court, viz., Additional District Munsiff Court, Namakkal, to complete the execution proceedings in R.E.P.No.5 of 2014, within three months from the date of receipt of a copy of this order.

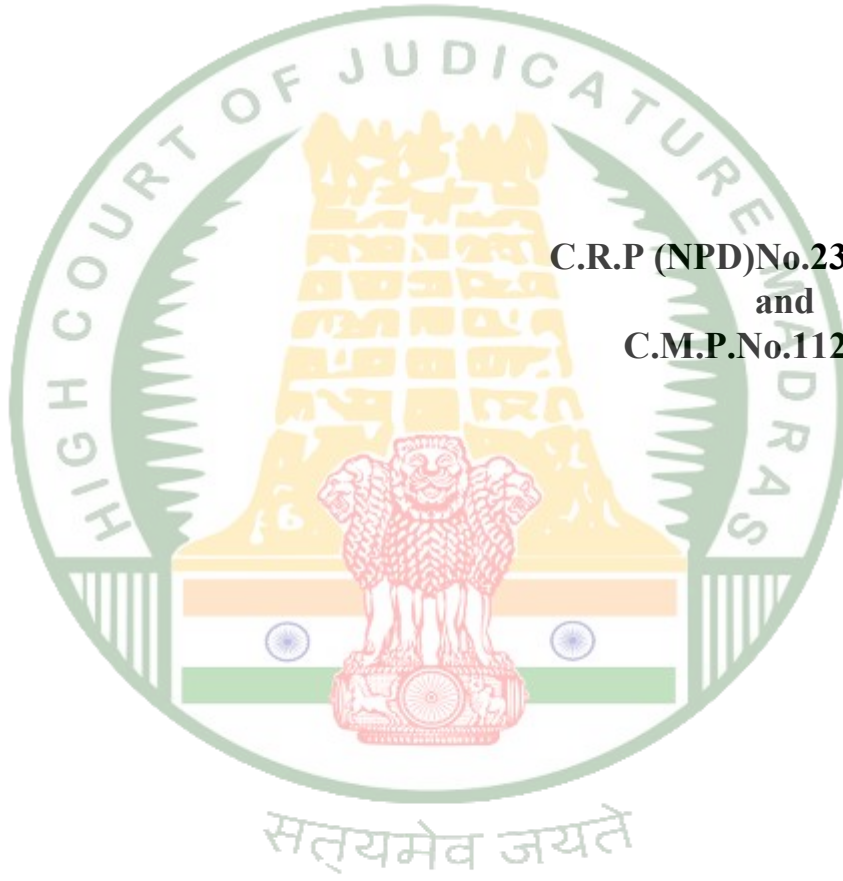
7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2021

Speaking/Non-speaking Order
jd/sd

To
The Additional District Munsiff Court, Namakkal.

Krishnan Ramasamy, J.,
jd/sd



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