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C.R.P. (NPD) .No.2681 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2681 of 2017

and

C.M.P.No.12749 of 2017

1.M.Lakshmipathi (died)

2.L.Nalani

3.P.Munirathinam

4.L.Deepak

.. Petitioners

(Petitioners 2 to 4 brought on record as LR's of the deceased sole petitioner viz., M.Lakshmipathi, vide order of this Court dated 29.03.2021 made in C.M.P.Nos.13309, 13311 & 13312 of 2019 in C.R.P.(NPD).No.2681 of 2017)

Vs.

1.Chaganlal

2.Ashok Kumar

3.Pushpa Bai

4.Bharat Kumar

5.Ramesh Kumar

.. Respondents



Prayer: This Civil Revision Petition is filed under Article 115 of the Constitution of India, to set aside the judgment and decree dated 14.07.2017 passed by the IX Assistant Judge, City Civil Court, Chennai, in E.A.No.208 of 2017 in E.A.No.1232 of 2014 in E.P.No.1559 of 2014 in O.S.No.5291 of 2001.

For Petitioners : Mr.P.Dinesh Kumar

For Respondents : Ms.K.Lekkha

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed to set aside the judgment and decree dated 14.07.2017 passed by the IX Assistant Judge, City Civil Court, Chennai, in E.A.No.208 of 2017 in E.A.No.1232 of 2014 in E.P.No.1559 of 2014 in O.S.No.5291 of 2001.

2.The 1st petitioner is the defendant in O.S.No.5291 of 2001 and respondent / Judgment Debtor in E.P.No.1559 of 2014 and petitioner in E.A.No.1232 of 2014 and E.A.No.208 of 2017. The respondents filed the said suit against the 1st petitioner for possession of the suit property. The said suit



was decreed by the judgment and decree dated 31.08.2006. The 1st petitioner filed First Appeal in A.S.No.816 of 2006. The said First Appeal was dismissed by the judgment and decree dated 20.07.2011 confirming the decree passed in O.S.No.5291 of 2001. The appeal filed before the Hon'ble Apex Court was also dismissed by the judgment dated 21.02.2012. The respondents earlier, while the First Appeal was pending, filed E.P.No.719 of 2007. The 1st petitioner filed E.A.No.2690 of 2007 alleging that decree is not executable. The said E.A. was allowed on 19.06.2009. C.R.P.(NPD).No.1853 of 2009 and Review Application No.146 of 2006 in C.R.P.(NPD).No.1853 of 2009 filed by the respondents were dismissed by this Court by the order dated 09.09.2009 and 23.07.2010 respectively. Subsequently, after judgment and decree in First Appeal in A.S.No.816 of 2006, the respondents filed E.P.No.1559 of 2014 for taking possession. In the said E.P., the 1st petitioner filed E.A.No.1232 of 2014 under Section 47 of C.P.C., alleging that the decree is not executable. The respondents filed counter and the 1st petitioner filed reply in the said E.A. In E.A.No.1232 of 2014, the 1st petitioner filed two applications for re-opening and recalling R.W.1. The said applications were allowed. While pending recall R.W.1, the 1st petitioner has filed the present E.A.No.208 of 2017 under Section 151 of C.P.C., to permit the 1st



petitioner to file additional grounds in E.A.No.1232 of 2014 in E.P.No.1559 of 2014 to allow the Section 47 application and dismiss the E.P. as inexecutable. The respondents filed counter affidavit and opposed the said application.

3.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the E.A., holding that the 1st petitioner is disputing his own title when he has not taken such a stand in the suit filed by the respondents and appeal filed by him.

4.Against the said order dated 14.07.2017 made in E.A.No.208 of 2017, the present Civil Revision Petition has been filed.

5.Pending Civil Revision Petition, the sole petitioner died. The petitioners 2 to 4 were brought on record as legal heirs of the deceased sole petitioner by the order of this Court dated 29.03.2021 made in C.M.P.Nos.13309, 13311 & 13312 of 2019 in C.R.P.(NPD).No.2681 of 2017

6.The learned counsel appearing for the petitioners submitted that the



learned Judge failed to see that in an application filed under Section 47 of C.P.C., the Execution Court has to decide the issues relating to execution, discharge and satisfaction of decree and the learned Judge ought to have allowed the present petition to raise additional grounds in the E.A. The learned Judge erred in holding that 1st petitioner has not disputed his title in earlier proceedings and is estopped in raising such a plea now. The estoppel will be with regard to facts only and not for law. The property originally belonged to one Nellore Gopal Chetty, who, by the Will dated 11.08.1919 bequeathed the property to his wife, Nellore Kuppammal. Only based on the said Will, she executed the settlement deed in favour of the 1st petitioner. The property is in Chennai. The Will was not probated. Hence, the Nellore Kuppammal did not get any title based on unprobated Will and settlement in favour of the 1st petitioner is void. The Execution Court erred in observing that since judgment passed in the Appeal in A.S.No.816 of 2006 is confirmed by the Hon'ble Apex Court, the petitioner has no right to dispute the validity of the decree. The learned Judge failed to consider that the present petition is filed with regard to ownership of the property and executability of the decree. The respondents, without impleading other persons who have interest in the suit property, filed the suit and decree obtained is invalid. In view of the



above circumstances, the additional grounds are necessary to bring forth the true facts and only if the additional grounds are raised, the petitioner will be in a position to let in evidence and prayed for allowing the Civil Revision Petition.

7.The learned counsel appearing for the respondents submitted that the learned Judge has considered all the materials placed before him in proper perspective and exercising his jurisdiction conferred on him, has dismissed the E.A.No.208 of 2017 by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

9.From the materials available on record, it is seen that the respondents have filed suit in O.S.No.5291 of 2001 against the 1st petitioner for possession of the suit property. The 1st petitioner contested the suit. The suit



was decreed and First Appeal in A.S.No.816 of 2006 filed by the 1st petitioner was dismissed confirming the decree passed in O.S.No.5291 of 2001. The appeal filed by the 1st petitioner before the Hon'ble Apex Court was also dismissed. Based on the decree, the respondents have filed E.P.No.1559 of 2014. In the E.P., the petitioner filed E.A.No.1232 of 2014 under Section 47 of C.P.C., alleging that the decree is not executable. In the said E.A., the respondents filed counter affidavit. The 1st petitioner also filed reply and also filed two applications for re-opening and recalling R.W.1. Both the applications were allowed by the Execution Court. At that stage, the 1st petitioner filed the present E.A.No.208 of 2017, seeking permission to raise additional grounds.

10.From the affidavit filed by the 1st petitioner in support of the present E.A., it is seen that the 1st petitioner is raising a new ground that 1st petitioner himself has no title over the suit property and sale deed executed by him in favour of the respondents is invalid. No such ground was raised by him in the said appeal filed before this Court and also in the appeal filed before the Hon'ble Apex Court. This Court and the Hon'ble Apex Court have held that the respondents are entitled to possession of the suit property. The learned



Judge has held that the 1st petitioner has not disputed his title up to S.L.P. before the Hon'ble Apex Court and therefore, the 1st petitioner is not entitled to raise additional grounds disputing his own title. The reason given by the learned Judge for dismissing the E.A. is valid and legal. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

11.For the above reason, this Civil Revision Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed. No costs.

21.10.2021

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Index : Yes / No

Internet : Yes / No

To

The learned IX Assistant Judge,
City Civil Court,
Chennai



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V.M.VELUMANI, J.
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