



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1507 of 2011

Godwin Bright ... Petitioner/Additional 5th Respondent/
Not Party in Suit

Vs.

1.Vijayamma
2.Balalochanan Nair ... Respondents 1-2/Petitioners/
Plaintiffs
3.Nesamony (died)
4.Chellammal (died)
5.Stephen
6.Thampi Joseph (died) ... Respondents 3-6/Respondents/
Defendants

(memo in USR No.573 dated 30.01.2014 recorded
as RR4 and 6 were died. Petitioner and
5th respondents who were already on record
and recorded LRs of deceased RR4 and 6 vide Court
order dated 14.10.2019)

7.N.Stanley Jones
8.N.Kingsly Jones
9.N.Albin Jones
10.N.Glory Roselet

11.Darli Mabel ... Respondents 7 to 11

(R7 to R11 are brought on record as LRs
of deceased R3 vide Court order dated
14.10.2019 made in M.P(MD)Nos.1 to 3 of 2015)

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decreetal order made in E.P.No.138 of 1995 in O.S.No.319 of 1982 dated 18.03.2011 on the file of the Principal District Munsif Court, Kuzhithurai.

For Petitioner : Mr.M.Dennis Joe
For Respondent : No appearance



ORDER

This Civil Revision Petition is filed challenging the order dated 18.03.2011, passed in E.P.No.138 of 1995 in O.S.No.319 of 1982 by the learned Principal District Munsif, Kuzhithurai.

2.The revision petitioner is the son of one Ambrose, who is the deceased son of the original mortgagee Devavaram. The plaintiffs in the suit in O.S.No.319 of 1982, who are respondents 1 and 2 herein, had filed the above suit for redemption of mortgage and recovery of possession, without depositing any amount as mortgage money or on deposit of such amount as is adjudged payable on the mortgagee. In the suit, a preliminary decree was passed on 14.12.1984. and final decree was passed on 18.11.1991. Thereafter, the decree holders had filed E.P.No.138 of 1995 for recovering possession of the suit schedule property. The revision petitioner was impleaded as a party on 13.06.2000. The second judgment debtor is his mother and the 3rd and 4th judgment debtor are his brothers and they had been impleaded as defendants 2 to 4 in the suit.

3.The revision petitioner herein had filed a counter *inter alia* contending that the decree in O.S.No.319 of 1982 was not binding on him, as he was not a party to the same and he had an independent right in respect of the suit property. He would contend that there was an earlier suit filed by the plaintiffs in O.S.No.321 of 1982 which was disposed of in his favour.

4.The learned Principal District Munsif, Kuzhithurai, after hearing the parties proceeded to allow the execution proceedings on the ground that the revision petitioner herein had failed to prove any of the contentions raised by him in his counter. Therefore, the learned Judge held that the revision petitioner has no right to obstruct the execution of the decree in O.S.No.319 of 1982. The learned Judge had directed delivery of possession. This order is the subject matter of the present revision.

5.The delivery of the property is stated to have been taken on 18.04.2011 as per the records. However, the revision petitioner would submit that it is only a paper delivery. Challenging the order passed in the execution proceedings, the revision petitioner has filed the above revision, in which, he reiterated the contention raised by him that he had an independent right over the property by virtue of sale deeds marked by him and that the respondents/decreed holders had not disputed the right of the revision petitioner. The other defence raised is that the property described in the execution proceedings, is not available on site and therefore, the execution proceeding has to be set aside.

6.Heard the learned counsel appearing for the petitioner and perused the records. The respondent though served has not entered appearance.



7.A perusal of the plaint in O.S.No.319 of 1982 would show that the schedule of property contained in the suit is the very same schedule of property in respect of which the decree has been granted and the execution filed. The admitted case of the party is that the mortgagee was one Devavaram and the first defendant was his son and he had another son Ambrose, who was not alive at the time of filing of the suit and therefore, his wife and two sons were made parties to the proceedings. They trace their possession of the suit property to the said Devavaram.

8.In the suit, a preliminary decree and a final decree were passed and thereafter execution petition has been filed. Admittedly, the schedule of property given in the plaint, decree and the execution proceedings, are one and the same. The decree has been granted with reference to this property. The fifth defendant/revision petitioner herein, who claims to have an independent right, has not produced any documents to prove such a right and the learned Principal District Munsif, Kuzhithurai, has observed that the revision petitioner has not produced any evidence to show that the property in respect of which delivery is sought, is the very same property in which, the fifth respondent was in possession. Therefore, in the absence of the same, the revision petitioner cannot seek to object to the delivery of the property ordered by the Executing Court. As regards the argument that the property as described is not available in site, it is seen that the same has not been proved by the revision petition. Therefore, the Executing Court is bound by the decree and has to execute the same.

9.In these circumstances, I do not find any reason to interfere with the order passed by the learned Principal District Munsif, Kuzhithurai. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:-

The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.M.DENNIS JOE, Advocate (SR-38413[F] dated 13/12/2021)

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13.12.2021

SS (CO) GC (11.02.2022) 4P 3C