



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.04.2021

Pronounced On : 18.06.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

C.R.P. (NPD) (MD).878 of 2019

and C.M.P. (MD)No.5135 of 2019

R.Periyasamy : Petitioner/Petitioner /3rd Party

Vs.

1.Balammal : 1st Respondent/1st Respondent/Defendant

2.A.Nageswaran : 2nd Respondent/2nd Respondent/Petitioner

3.V.Ramar : 3rd Respondent/Auction Purchaser /3rd Party

PRAYER : Civil Revision Petition has been filed under Section 115 of CPC, to set aside the order passed by the learned District Munsif of Theni, Theni District in E.A.No.78 of 2015 in E.P.No.46 of 2010 in O.S.No.711 of 2004, dated 17.09.2018.

For Petitioner : Mr.V.Nagendran
For Respondents : Mr.R.Sevugaraja, for R1.
: Mr.M.D.Ravi saravana Priya, for R2.
: Mr.P.T.S.Narendravasan, for R 3.

ORDER

It is apt to begin the order with the words of the Hon'ble Supreme Court in **Rahul S Shah Vs. Jinendrakumar Gandhi and others**,

"The course of the litigation highlights the malaise of constant abuse of procedural provisions which defeats justice, i.e., frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree."

2.This case is a classic example to show how the provisions of Execution under the Code of Civil Procedure are being misused so as to prevent the decree-holder from realizing the fruits of the decree.

3.The Civil Revision Petition is directed against the order passed in E.A.No.78 of 2015 in E.P.No.46 of 2010 in O.S.No.711 of 2004, dated 17.09.2018, on the file of the District Munsif Court, Theni, dismissing the petition filed under Section 47 of CPC.



4.The revision petitioner is a Third party to the original suit proceedings and the subsequent execution proceedings and he is none other than the son of the judgment debtor/first respondent herein. The second respondent/plaintiff has filed the suit in O.S.No.711 of 2004 to recover the mortgage loans due by the first respondent/defendant and obtained preliminary decree on 15.12.2005 and thereafter, the final decree on 30.11.2007. The second respondent/decree holder has laid the execution in E.P.No.46 of 2010 for sale of mortgaged property and the third respondent herein has become the successful bidder and purchased the property in the Court Auction held on 14.11.2011. The Sale was confirmed in E.A.No.7 of 2012 on 27.03.2012 and Sale Certificate was ordered to be issued. Thereafter, the third respondent/Court auction purchaser has filed a petition, seeking delivery of the property and during the pendency of the above petition, the revision petitioner/3rd party has filed the application under Section 47 of CPC, seeking orders for setting aside the decree as null and void.

5.The case of the revision petitioner in the claim petition is that the property was owned by his mother/first respondent, that there was a family partition 25 years ago and the petitioner and his brothers got separated and that they have been in possession and enjoyment of the said property. The revision petitioner has also taken a stand in the very same claim petition that the petition mentioned property was purchased by the hard earnings of the petitioner, his brothers and their father in the name of their mother the first defendant, that their mother had orally entrusted the petition mentioned property to her sons, namely, Subramani, Periasamy/revision petitioner herein and Murugan and that they have been in peaceful possession and enjoyment of the residential houses available in the property for the past more than 25 years.

7.It is the further case of the revision petitioner that the second respondent/plaintiff taking advantage of illiteracy of the first respondent, had cunningly planned to cheat the petitioner's family by filling up the blank papers signed by the first respondent allegedly given for taking small hand loan, that the second respondent had suppressed all the transactions held between him and the first respondent, that the revision petitioner came to know about the entire proceedings only after the Court Amin came to the property and enquired about the first respondent and that therefore, the decree obtained by the first respondent fraudulently, is absolutely invalid and the same is liable to be set aside.

8.It is not in dispute that the sale deed in respect of the property, now under dispute, stands in the name of the first respondent/defendant. Though the revision petitioner has taken a stand that the property was purchased by the earnings of himself and his brothers and father, he has not elaborated anything further.



It is not shown specifically that the property was purchased not for the benefit of the first respondent, but for their benefit.

9.As already pointed out, though the revision petitioner has taken a stand that their mother had entrusted the property to her sons 25 years back and that the petitioner and his brothers have been in possession and enjoyment of the same for the past 25 years, he has not produced any evidence to substantiate the same. It is pertinent to note that the first respondent/defendant in her written statement filed to the suit in O.S.No.711 of 2004, has nowhere whispered that she had already entrusted the suit property to her sons and that she was not in possession and enjoyment of the same at that time.

10. As rightly pointed out by the learned counsel for the second respondent, the legal representatives of the deceased Subramanian, who is the elder son of the first respondent, had filed a similar petition in E.A.No.74 of 2017 and after enquiry, the same was ordered to be dismissed, vide order dated 15.11.2017. The civil revision petition in CRP(MD)No.2564 of 2017 filed against the dismissal of the petition in E.A.No.74 of 2017, was also ordered to be dismissed for non-prosecution, vide order dated 24.01.2018.

11. It is not in dispute that the third son of the judgment debtor Murugan has filed a petition in E.A.No.77 of 2015 for the very same relief of setting aside the decree passed in O.S.No.711 of 2014 and after enquiry, the same was ordered to be dismissed by the learned District Munsif, Theni, vide order dated 17.09.2018. Aggrieved by the said order, the said Murugan has preferred a revision in CRP(MD)No.2719 of 2018 and this Court has passed an order dated 29.04.2019, dismissing the revision.

12. As rightly contended by the learned counsel for the second respondent, the judgment debtor has set up her another son, the revision petitioner herein, to file the petition in E.A.No.78 of 2015 for setting aside the decree passed in O.S.No.711 of 2014 and after dismissal of the same, the above civil revision came to be filed.

13.This Court, in the order dated 29.04.2019 in CRP(MD)No.2719 of 2018, has specifically observed that the intention of the revision petitioner therein, i.e., the second son of the judgment debtor is only to prevent the third respondent from obtaining the fruits of the decree. It is not the case of the revision petitioner or the first respondent/defendant that the first respondent was not at all aware of the suit proceedings and that in her absence, decrees were obtained behind her back. As rightly pointed out by the learned counsel for the second respondent, the first respondent had engaged a counsel in the original suit proceedings and subsequently, he allowed the suit proceedings to be decided ex-parte.



14.It is further evident that the first respondent has entered into appearance in the final decree proceedings and in the execution proceedings by engaging her counsel to defend her. It is not the specific case of the revision petitioner, that there was no cordial relationship between him and his mother.

15.On considering the entire facts and circumstances, as rightly contended by the learned counsel for the second respondent, the contention of the revision petitioner that he was not aware of the entire proceedings and that he came to know about the proceedings only after the visit of the Court Amin is an utter falsehood.

16.As already pointed out, the suit was filed in the year 2004 and final decree was passed in 2007. Though the third respondent has purchased the property in Court auction on 14.11.2011 and the sale was confirmed on 27.03.2012, the respondents 2 and 3 are unable to realize the fruits of the decree. As already pointed out, the first respondent/defendant after losing her battle, she had set up her three sons to file claim petitions one after another to protract the proceedings as much as possible.

17.The Hon'ble Apex Court, in the judgment mentioned above, has come down heavily on the delaying tactics adopted by the parties in the execution proceedings and issued directions so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and directed the Executing Court to dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing.

18.In the case on hand, as already pointed out, the execution was laid in the year 2010 and already 10 years had elapsed and that the judgment debtor and her sons have been successfully preventing the decree holder and the Court auction purchaser from realizing the fruits of the decree till now.

19.Considering the above, this Court decides that the revision petition is absolutely devoid of merits and the decision of the Executing Court in dismissing the petition filed under Section 47 of CPC, cannot be found fault with. Consequently, the Civil Revision Petition is liable to be dismissed and is dismissed. Considering the facts and circumstances of the case and the nature of the claim put forth by the revision petitioner and the delaying tactics adopted by the family of the revision petitioner, this Court is of the view that the petitioner must be mulcted with exemplary costs.

20.In the result, the Civil Revision Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand Only) payable to the Legal Service Authority attached to this Bench within a period of four



weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

21. Post the matter after six weeks ' for reporting compliance.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

das

To

The District Munsif of Theni, Theni District

Copy to

1. The Officer Incharge, Legal Service Authority,
Madurai Bench of Madras High Court, Madurai.

2. The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.NAGENDRAN, Advocate (SR-19812[F] dated 22/06/2021)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-19710[F] dated 21/06/2021)

Order made in
C.R.P. (NPD) (MD) .878 of 2019
and
C.M.P. (MD) No.5135 of 2019
18.06.2021

srk(CO)

TR(02.07.2021) 5P 6C