



CRP (NPD) .No.574 of 2005

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.09.2022	Pronounced on 12.10.2022
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD).No.574 of 2005

Arulmighu Dhandayuthapani Thirukoil Palani,
Rep. by its Joint Commissioner/Executive Officer.

... Petitioner

Vs.

1.Chellappan (died)

2.V.Palaniswamy

3.S.Sagunthala

4.C.Sivasakthi

5.C.Sivasankari

6.C.Sivakumar

7.K.C.Sivabalan

... Respondents

(R3 to R7 are legal heirs of R1, brought on record vide order dated 06.02.2020 made in CMP.No.1785 to 1787 of 2009 in CRP.No575 of 2005)



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Prayer : Petition under Section 115 of C.P.C., to set aside the fair and decreetal order dated 10.08.2004 made in E.A.No.37 of 2002 in E.P.No.258 of 1999 in OP.No.4 of 1994 on the file of the District Munsif Court, Udumalpet.

For Petitioner : Mr.M.Sriram

For Respondents : No appearance

ORDER

Arulmighu Dhandayuthapani Thirukoil, Palani is the Petitioner herein, who is an Objector and third party before the Execution Court.

2.This Petition is filed to set aside the fair and decreetal order dated 10.08.2004 made in E.A.No.37 of 2002 in E.P.No.258 of 1999 on the file of the District Munsif Court, Udumalpet.

3(a).The case of Petitioner is that the properties measuring to an extent of 50 cents in S.F.No.703/3D and an extent of 6 acres in S.F.No.706/2 in Mivadi Village, Udumalpet Taluk is absolutely belong to the Petitioner temple. The title of the temple was declared by the competent Civil Court and this Court also upheld the same. The 2nd respondent herein initiated proceedings before the



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Record Officer namely the Tahsildar, Udumalpet to register his name as cultivating tenant and the same was also ordered on 29.7.1997 in T.R.No.37 of 1993. In the above circumstances, by suppressing the title of the temple, the 1st respondent herein claiming himself as the owner of the property had executed a mortgage on 31.8.1988 in favour of the 2nd respondent herein for Rs.15,000/-. Subsequently to defeat the claim of the temple a petition for redemption of mortgage in O.P.No.4 of 94 before the District Munsif Court, Udumalpet was filed and the same was decreed on 13.10.1995.

3(b).The 2nd respondent herein filed an appeal questioning the order dated 13.10.1985 in C.M.A.No.57 of 95 and the same was also dismissed on 23.04.1996. In pursuant to the order dated 13.10.1985, for execution of the said order in E.P.No.258 of 1999 was filed. Immediately after knowing the said fact, the temple filed a petition under Section 47 of C.P.C. in E.A.No.37 of 2002 on 17.1.2002 and the same was dismissed on 10.8.2004 on the ground that the Petitioner temple was not a party to the proceedings in O.P.No.4 of 1994. Therefore Petition under Section 47 of C.P.C. was dismissed as not maintainable.



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4. Heard the learned Counsel for the Petitioner. Though Respondents' name printed in the cause list, none appeared. Despite opportunity, Respondents have not chosen to enter through Advocate. Perused the records.

5. The Joint Commissioner-cum-Executive Officer of the Arulmighu Dhandayuthapani Swamy Thirukoil, Palani, has preferred this Revision Petition against the dismissal of the Objector Petition filed under Section 47 of CPC.

6. Learned counsel for the Petitioner submitted that aggrieved by the said order dated 10.08.2004, the temple has filed the present C.R.P. The very object of Section 47 of C.P.C. is to prevent the parties from going before the Civil Court by way of yet another suit and the multiplicity of the proceedings. All disputes in respect of Execution should be decided in the same proceedings instead of dragging them to file separate suit. Hence, the Temple filed the present CRP to safeguard its property right.

7. The records filed in the typed set reveals the following facts.



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- i. On 19.08.1968, by order of the settlement Tahsildar – 1, Gobichettiypalayam, Ryotwari patta granted to KV Kolandaivelu & 5 of his sons under Section 8(2)(ii) & 21(3) of Act 30/1963 (Inam Abolition Act).
- ii. On 03.07.1972, order passed in C.M.A.No.215 of 1970.
- iii. On 11.09.1975, in STA.No.37 of 1973, this High Court ordered to issue patta in favour of Arulmighu Dhandayuthapani Swami Thirukoil, Palani.
- iv. On 16.07.1990, order made in Civil Appeal No.920 of 1976, dismissing the Appeals and confirming the orders in favour of the deity.

8(a).While facts being so, records reveals that suppressing the judgment of the Hon'ble Supreme Court in Civil Appeal No.920 of 1976, Respondents 1, 6 & 7, has filed OP.No.4 of 1994 for redemption of mortgage under Section 83 of Transfer of Property act, on the footing that they entered into an agreement of mortgage with the 2nd Respondent and for the balance amount, redemption of mortgage has been filed. On 31.08.1998, OP was filed by K.Chellappan and his sons on the basis of a mortgage deed 31.08.1998, claiming to have discharged the mortgage loan of Rs.15,000/- and sought for redeeming the property.



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8(b).Written statement also filed by the 1st Defendant stating that the property belongs to the temple. The 1st Defendant stated that the Plaintiffs are bound to refund the loan of Rs.15,000/-, since the property does not belong to the Plaintiffs, but to the temple. The trial Court had decreed the suit as against the same first defendant viz., Palanisamy, since the Defendant/Palanisamy cannot set up a title against the land owner.

8(c).Thereafter, the defeated Defendant in Suit, filed CMA.No.57 of 1995 on the file of the Sub Court, Udumalpet, which was dismissed on 23.04.1996. Execution Petition was filed by the Decree Holder K.Chellappan against the said Palanisamy/Judgment Debtor.

8(d).On 16.07.2002, counter statement filed by the first Respondent/Decree Holder. 2nd Respondent/Judgment Debtor also filed counter, claiming as tenant. By order dated 10.08.2004, E.A. filed by Arulmighu Dhandayuthapani Swamy Thirukoil, Palani, was rejected and hence this present Petition.



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9(a).Initially, by an order dated 04.03.2005 in CMP.No.3770 of 2005 interim stay was granted, subsequently, it was made absolute on 06.09.2008.

9(b).At the risk of repetition, however for the sake of clarity, this Court has perused the orders of the Hon'ble Supreme Court in Civil Appeal No.920 of 1976, whereby, patta, directed to be issued in favour of Arulmighu Dhandayuthapani Thirukoil Palani, was confirmed by the Hon'ble Supreme Court, wherein the 1st Respondent herein, who is also Petitioner in OP.No.4 of 1994 (Redemption suit) is also a party. I have also perused the copy of Petition in the OP.No.4 of 1994 filed for redemption. The OP was filed by K.Chellappan and his sons on the basis of a mortgage deed dated 31.08.1998 and the same was allowed. In the written statement, the Respondent/Defendant also stated that the property does not belong to the Plaintiff therein, but to the temple and hence, opposed for redemption of mortgage. The suit was decreed. Appeal in C.M.A.No.57 of 1995 was dismissed and the Decree Holder filed EP.258 of 1999, wherein Petition under Section 47 has been filed. The Execution Court has passed an impugned order, observing that a separate suit can be filed by the temple, without noticing the order passed by the Hon'ble Supreme Court in Civil Appeal No.920 of 1976 dated 10.07.1990.



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10.From the documents filed, I find that the said Palaniswamy is not the owner of the property. He is only a tenant of the land belongs to the Temple as per the tenancy agreement, dated 14.02.1995 and hence, I find that suppressing the earlier decree passed by civil Court in C.M.A.No.215 of 1970 and by Division Bench of this Court in STA.No.37 of 1973 and suppressing the entire civil proceedings before the civil Court, regarding the title to suit property, the first Respondent/Plaintiff before the trial Court in connivance with the 2nd Respondent/Defendant has created a mortgage deed, as if the sole and the absolute owner of the property and based on the mortgage deed, they filed a mortgage suit and obtained redemption decree and hence, I find that the decree obtained in OP.No.4 of 1994 is nothing but a decree obtained by playing fraud upon the civil Court.

11.To sum up, (a) the Petition property was declared to be the property of Arulmighu Dhandayuthapani Swamy Thirukoil Palani, in the above referred proceedings, which is culminated in confirmation of the decree in favour of the temple by the Hon'ble Supreme Court in C.A.No.920 of 1976 on 10.07.1990. (b) The 1st Respondent, who is the Plaintiff and his sons Sivakumar and



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Sivabalan have jointly executed a mortgage deed on 31.08.1988 in favour of the 2nd Respondent and hence, OP filed for redemption of mortgage and decree obtained therein is nothing but fraud committed by both the parties in coercive manner and to defeat the decree passed by this Court in STA.No.37 of 1973 (Act 30 of 1963) and as confirmed by the Hon'ble Supreme Court in Civil Appeal No.920 of 1976.

12.Section 47 of the C.P.C. Indicates the salutary rule that all questions relating to execution, discharge or satisfaction of the decree, shall be determined not by a separate suit, but in execution of the decree. In an application under Section 47, the question that a decree is not executable being a nullity can be raised and the executing Court can decide the question. A decree which is a nullity in the eye of law is no decree and hence even by consent of the parties such a decree cannot be executed by the Court. If the Court finds that the decree is a nullity, as contended by the Judgement Debtor, the Court cannot proceed to execute it, and it is the duty of the Court to hold that the decree is not executable.

13.Section 47 of the Code is couched in a very wide language. The very



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object is to avert another suit concerning the decree under execution.

Sub-section (1) of Section 47 of the Code states that -

"(i) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

Perhaps sub-section (i) would not have made it clear that dispute between a party to the suit and another claiming to be his representative could have been resolved in execution proceedings. But that doubt no longer subsists in view of sub-section (3) which reads :

"(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court,"

14. In the case of A.V. Papayya Sastry and Others Vs. Govt. of A.P and Others reported in (2007) 4 Supreme Court Cases 221, it is held as follows:

21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a



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judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

22.It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior.

...

27.In S.P. Chengalvaraya Naidu (dead) by LR. V. Jagannath (dead) by LR. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331, Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party.

...

28.Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"... Property-grabbers, tax- evaders, bank-loandodgers and other unscrupulous persons from all walks of life find the court - process a



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convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

15.In the case of ***Maya Devi Vs. Lalta Prasad*** reported in (2015) 5 ***Supreme Court Cases 588***, the Hon'ble Supreme Court, while dealing with the attachment of property to satisfy the decree against the judgment debtor, who had no title therein, has held that duty of Court to decide objections on enforcement of decree with complete care and circumspection to avoid any injustice, especially, if an objection is raised to attachment of property concerned on grounds that property concerned does not belong to judgment-debtor, and belongs to objector.

16.On considering the above citation of law elicited by the Hon'ble Supreme Court on the plea of enforceability of civil decree, which is obtained by fraud, it is settled law that civil Court has power to hold that the decree obtained by committing fraud upon the Court can be held to be unenforceable.

17.Division Bench of this Court rendered a judgment in STA.No.37/1973 dated 11.09.1975, held that this is a case of a religious devadayam inam granted



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to the deity Dhandayuthapani at Palani and not to any other individual in any capacity whatever and the deity itself being the grantee. K.Chellappan, who is the 3rd Respondent in the said STA also before the Hon'ble Supreme Court in C.A.No.920/1976. OP.4/1994 was filed by Chellappan along with his sons on the footing that they mortgaged property with V.Palaniswamy on 31.08.1988, as if they are the true owners of the property, is nothing but suppression of the decree granted by this Court in above said STA.No.37 of 1973.

18.On the facts and circumstances of this case, I find that the above proposition of law squarely covered with the facts of instant case and accordingly, I have no hesitation to hold that order the passed by the learned Judge is hereby set aside and Defendant in the suit has also accepted the title of the land with the temple, as could be seen from the written statement, and the Respondent before the trial Court is only a tenant and hence, I find that the possession of the property has to be restored to the temple authorities and the Executive Officer/Joint Commissioner is hereby required to take the possession of the property, immediately, within a period of twelve weeks from the date of receipt of a copy of this order and the Commissioner and Secretary of HR & CE shall personally supervise the proceedings of recovery of possession of the



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petition property, pursuant to the orders of the Hon'ble Supreme Court.

19. Accordingly, as ordered by the Hon'ble Supreme Court in C.A.No.920 of 1976, dated 16.07.1990, the Petitioner Arulmighu Dhandayuthapani Thirukoil, Palani is the owner of the property measuring to an extent of 50 cents in S.F.No.703/3D and an extent of 6 acres in S.F.No.706/2 in Mivadi Village, Udumalpet Taluk.

20. In fine, this Civil Revision Petition is allowed and the fair & decreetal order dated 10.08.2004 made in E.A.No.37 of 2002 in E.P.No.258 of 1999 in OP.No.4 of 1994 on the file of the District Munsif Court, Udumalpet is hereby set aside and accordingly, Petition in E.A.No.37 of 2002 in E.P.No.258 of 1999 in OP.No.4 of 1994 filed by the Temple/Petitioner is hereby stands allowed.

No costs.

12.10.2022

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

sai

To

The learned District Munsif,
District Munsif Court,



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Order made in

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Dated: 12.10.2022