



C.R.P(NPD)No.3514 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>25.03.2022</i>
<i>Pronounced on</i>	<i>11.04.2022</i>

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

**C.R.P(NPD)No.3514 of 2015
and M.P.No.1 of 2015**

- 1.Hamsa Ammal
- 2.Pary
- 3.Chendamarai
- 4.Murali

...Petitioners

Versus

- 1.Manogaran
- 2.K.Senthil

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 17.04.2014 in E.A.No.302/2010 in E.P.No.73/2009 in O.S.No.19/2008 on the file of Additional District Munsif, Vellore.

For Petitioners : Mr.R.Rajarajan

For Respondents : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioners challenging the fair and decreetal order passed by the learned Additional District Munsif, Vellore in E.A.No.302/2010 in E.P.No.73/2009 in O.S.No.19/2008 dated 17.04.2014 , dismissing the Interlocutory Application filed by them.

2. The learned counsel for the revision petitioners submitted that the first respondent/plaintiff has filed the suit O.S.No.19 of 2008, as against the second respondent/defendant and the same was decreed in favour of the first respondent/plaintiff on 19.01.2009. Subsequent to the decree, the first respondent has filed E.P.No.73 of 2009 on the file of the Additional District Munsif Court, Vellore, for execution of the said money decree for Rs.67,500/-. In the said execution proceedings, the property bearing S.No.316/14 ad-measuring an extent of 3,200 Sq.ft was brought for sale.



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2.1. The aforesaid suit property is the joint family property and the same belongs to one Kasi Chettiyar. The petitioners are the wife and sons of the said Kasi Chettiyar and they are having $\frac{4}{5}$ th share in the suit property. The second respondent/judgement debtor is one of the son of Kasi Chettiyar and he is having only $\frac{1}{5}$ th share in the suit property. Though the petitioners are third parties to the execution proceedings, they have filed an Execution Application in E.A.No.302 of 2010 under Order XXI Rule 58 and Section 151 of C.P.C, for raising the attachment effected on 21.10.2008 over their $\frac{4}{5}$ th share in the E.P. schedule mentioned immovable property.

2.2. He further submitted that the market value of $\frac{1}{5}$ th share in the suit property itself will satisfy the decretal amount of Rs.67,500/- + interest, cost of the suit, etc., totally, Rs.81,368/-. The second respondent/judgement debtor is having only $\frac{1}{5}$ th of the share, whereas, the revision petitioners are having $\frac{4}{5}$ th of the share in the property, which was brought to sale in the execution proceedings.



2.3. He further submitted that in the said Execution Application, the petitioners have stated that

(i) Patta with respect to the suit property was granted in favour of the said Kasi Chettiyar, by the Tahsildar, Vellore Taluk and the patta number is 82. The petitioners came to know about the sale proclamation paper only on 03.07.2010, when a Court bailiff came to their house and affixed the same on the outer door of their house. After reading the said sale proclamation paper, they came to know that the suit property will be brought to sale on 09.08.2010.

(ii) On 05.02.2005, the second respondent borrowed a sum of Rs.50,000/- from the first respondent by executing a promissory note. Based on the aforesaid debt, the first respondent is bringing the entire E.P schedule mentioned immovable property for sale. The 4/5th share of the E.P schedule mentioned property belongs to the petitioners and only 1/5th share of the suit property belongs to the second respondent. The second respondent's aforesaid debt amount of Rs.50,000/- is not binding on the petitioners' family. As far as, the 4/5th share of the petitioners is concerned, the attachment effected will have to be raised.



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3. The first respondent has filed the counter affidavit in E.A.No.302 of 2010, wherein, he has denied the averments made by the petitioners that the property involved in E.P.No.73/2009 belongs to five legal heirs of the deceased Kasi Chettiyar, viz.,

- (i) Hamsa Ammal (wife of Late Kasi Chettiyar) - 1st petitioner
- (ii) Pary (son of Late Kasi Chettiyar) - 2nd petitioner
- (iii) Chendamari (son of Late Kasi Chettiyar) - 3rd petitioner
- (iv) Murali (son of Late Kasi Chettiyar) - 4th petitioner
- (v) Senthil (son of Late Kasi Chettiyar) - 2nd respondent

and only 1/5th share of the suit property goes to the second respondent herein. The first respondent further stated that the second petitioner viz., Pari has also borrowed money from him, for which, he has issued notice to the second petitioner, but, the said notice was returned unclaimed. Therefore, the first respondent is having right over the 1/5th share of the second petitioner also. The second respondent was set *ex-parte* after making paper publication.



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4. Before the Court below, on the side of the petitioners, 2 witnesses were examined viz., P.W.1 (Hamsa Ammal/1st petitioner) & P.W.2 (Murali/4th petitioner) and 10 documents were marked as exhibits viz.,

- | | | |
|------------------|---|---|
| (i) Ex.P1 | - | Patta in the name of Kasi Chettiyar |
| (ii) Ex.P2 | - | Legal Heir Certificate of the petitioners |
| (iii) Ex.P3 | - | Xerox Copy of A-Register Extract |
| (iv) Exs.P4 & P5 | - | Tax Payment Receipt to the suit property |
| (v) Ex.P6 | - | EB Receipt for the month of January 2006 |
| (vi) Ex.P7 | - | EB Receipt for the month of March 2006 |
| (vii) Ex.P8 | - | EB Receipt |
| (viii) Ex.P9 | - | EB Card from 19.03.2010 to 23.07.2010 |
| (ix) Ex.P10 | - | Sale Proclamation Paper |

and on the side of the respondents, no witnesses were examined and no exhibits were marked.

5. Heard the learned counsel for the petitioners and perused the materials available on record. None appeared on behalf of the respondents.



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6. It can be seen that on perusal of the records that on appreciation of the oral and documentary evidences, the trial Court held that on 19.01.2009, the decree was passed against the second respondent and the decree amount was Rs.67,500/-. But even before the passing of decree, the property got attached in the suit itself that is the attachment before judgement. It is also an admitted fact that no appeal has been preferred against the decree passed in O.S.No.19 of 2008 dated 19.01.2009. It is only after the sale notice was ordered, the petitioners filed E.A.No.302 of 2010, to raise the attachment order by stating that the suit schedule property is a joint family property, in which, the second respondent has got only 1/5th share and they are entitled to 4/5th share.

7. The trial Court has dismissed the execution application by observing that no sale deed has been produced to show that how the said Kasi Chettiyar derived title to the schedule property. In this regard, in E.A.No.302 of 2010, it is clearly stated by the petitioners that the E.P. schedule mentioned property originally belonged to one Munusamy Chettiyar and his wife Baggiammal. The said Munusamy Chettiyar and his



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wife Baggiammal had three sons viz., Govindaraja Chettiyar, Kasi Chettiyar and Vajiravelu Chettiyar. After the demise of said Munusamy Chettiyar and Baggiammal, their three sons orally divided the properties left by their father, in the year 2000. The E.P. schedule mentioned property was devolved and fell into the share of Kasi Chettiyar and so, he was in possession and enjoyment of the same by constructing a terrace building in it and paying property tax to the Government periodically.

8. While this being so, it is not possible to produce a sale deed in the name of Kasi Chettiyar, when the E.P schedule mentioned property devolved on him by way of oral partition between his brothers Govindaraja Chettiyar & Vajiravelu Chettiyar. Hence, the above finding/observation of the learned Additional District Munsif, Vellore in the order passed in E.A.No.302 of 2010 dated 17.04.2014 is untenable and unsustainable in law.

9. No doubt, the Patta alone will not confer title. But, the Patta is the document which evidences to show that the said Kasi Chettiyar was in possession and enjoyment of E.P. schedule mentioned property. The



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Tahsildar of the concerned Taluk after verifying through the Village Administrative Officer and conducting inspection by himself, has issued the Patta to the said Kasi Chettiyar who was in possession and enjoyment of the property. In regard to the ancestral property, there will be only the Patta to prove the possession of the property and not the sale deed as observed in the order by the trial Court. Moreover, the decree was passed on 19.01.2009, but the petitioners were not aware that the property got attached in the suit itself (attachment before judgement) and they came to know about the same only on 03.07.2010, when the sale proclamation paper was affixed on the door of their house. The petitioners are having 4/5th share in the suit schedule property, but, the second respondent is having only 1/5th share of the suit schedule property. The reasons adduced by the Court below for dismissing E.A.No.302 of 2010 filed by the petitioners, are not acceptable to this Court.

10. Considering the facts and circumstances of the case, the order passed by the learned Additional District Munsif, Vellore in E.A.No.302 of 2010 in E.P.No.73 of 2009 in O.S.No.19 of 2008 dated 17.04.2014 is liable



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to be set aside and the same is set aside.

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11. In the result, this Civil Revision Petition shall stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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The Additional District Munsif,
Vellore.



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J.SATHYA NARAYANA PRASAD, J.

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Pre-Delivery order
in C.R.P(NPD)No.3514 of 2015

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