



C.R.P. (NPD) No.1088 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (NPD) No.1088 of 2019

and

C.M.P.No.7135 of 2019

1.Sukumar

2.Maheshkumar

3.Arulkumar

.. Petitioners

Vs.

Munirathinammal (died)

1.Palani Babu

2.Kasiammal

3.Rayappan

.. Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed by the Principal District Judge, Puducherry, dated 21.12.2018, in I.A.No.1041 of 2015 in E.P.No.72 of 2013 in C.S.No.62 of 1982.

For Petitioners

: Mr.A.E.Ravichandran

For Respondents

: Ms.N.R.Jasmine Padma
for R2 & R3



C.R.P. (NPD) No.1088 of 2019

ORDER

WEB COPY

This Civil Revision Petition is directed against the order in I.A. No.1041 of 2015 in E.P. No.72 of 2013 in C.S. No.62 of 1982, on the file of the Principal District Court, Puducherry.

2. The revision petitioners are the plaintiffs/decree holders in C.S. No.62 of 1982. It is not in dispute that the revision petitioners had earlier obtained a decree in C.S. No.62 of 1982. The suit in C.S. No.62 of 1982 was filed by the revision petitioners for passing a preliminary decree for partition and separate possession of plaintiffs' 3/8 share and for consequential relief. The revision petitioners, filed an application in Application No.1502 of 1994 for passing of final decree and the application was allowed by an order of this Court dated 19.12.2000. The order in the final decree application was by allotting specific items in the suit properties to the plaintiffs. There was a direction to the defendants also to pay owelty to the plaintiffs. The revision petitioners thereafter filed an execution petition in E.P. No.72 of 2013 after transmission of the decree before the Principal District Court, Puducherry. However, the revision petitioners who are the decree holders in C.S. No.62 of 1992, found that



C.R.P. (NPD) No.1088 of 2019

WEB COPY

the execution by delivery of property was not possible and the Court Amine also returned the warrant for delivery of possession in view of the obstruction for delivery caused by some third parties. Therefore, the revision petitioners filed a petition to pass an order removing the third parties / obstructors so as to enable the Court Amin to execute the warrant and delivery of possession. The said application was opposed by the third parties by filing a detailed counter.

3. From the facts narrated in the counter affidavit, it is seen that the third parties have also obtained a decree in relation to the same property and got an order in second appeal in S.A. Nos.69 of 1985 from this Court. It was contended by the respondents that the suit property was donated to a private trust known as 'Palaniandavar Madam' and the ancestors of the respondents who are the members of the trust for a period of four generations is holding the property. They relied upon the judgment of this Court in S.A. No.69 of 1985 dated 03.08.1988. Unfortunately, it is noticed that in the proceedings initiated by the revision petitioner in C.S. No.62 of 1982, the objectors / third parties are not parties. Similarly, in the proceedings relied upon by the respondents namely Second Appeal in S.A.



C.R.P. (NPD) No.1088 of 2019

WEB COPY

No.69 of 1985, the revision petitioners or their predecessor's in interest are not parties. It is in these circumstances, the lower Court after observing that the rival parties have independent claims on the basis of different source of title, was not in a position to order either against or in favour of the petitioners or respondents. The Executing Court dismissed the application filed by the revision petitioners which was filed for executing the final decree that was passed in the partition suit earlier. Aggrieved by the order, the revision petitioners namely the plaintiff in C.S. No.62 of 1982, have preferred the above Civil Revision Petition.

4. As rightly contended by the learned counsel by the revision petitioners, the Court where an application is filed under Order 21 Rule 97 C.P.C, is expected to decide all questions arising between the parties to the proceeding in the application filed for removal of obstruction. Order 21 Rule 97 C.P.C. and Order 21 Rule 101 C.P.C. are extracted hereunder for convenience:

Order 21 Rule 97 C.P.C.:

“97. Resistance or obstruction to possession of immovable property.

—(1) Where the holder of a decree for the possession of immovable



C.R.P. (NPD) No.1088 of 2019

WEB COPY

property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

6[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]”

Order 21 Rule 101 C.P.C.:

“101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

5. Since the provisions under Order 21 Rule 101 C.P.C. are unambiguous, this Court has no hesitation to hold that the question relating to right, title or enjoyment of the suit property between the revision petitioners and the obstructors / third parties has to be decided only by the executing Court where the application under Order 21 Rule 97 C.P.C. is filed and the Court cannot refuse to go into the issue merely because there is a rival claim supported by judgment of a different Court.



C.R.P. (NPD) No.1088 of 2019

WEB COPY

6. In view of the conclusion reached by this Court, this Court is unable to sustain the order passed by the learned Principal District Judge, Puducherry, in I.A. No.1041 of 2015 in E.P. NO.72 of 2013 in C.S. No.62 of 1982 and the same is hereby set aside. The matter is remitted back to the lower Court with a direction to decide all questions relating to the right, title and interest arising between the revision petitioners and the obstructors. The learned Principal District Judge, Puducherry, is directed to dispose of the same as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

7. Accordingly, this Civil Revision Petition is allowed and disposed of with directions indicated above. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2022

Internet : Yes
Speaking order / Non-speaking order
Index: Yes / No
bkn



C.R.P. (NPD) No.1088 of 2019

WEB COPY

To
The Principal District Judge, Puducherry.



WEB COPY



C.R.P. (NPD) No.1088 of 2019

S.S.SUNDAR, J.,

bkn

C.R.P. (NPD) No.1088 of 2019

03.02.2022