



C.R.P.No. 2297 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 28.07.2022

Delivered On: 22.09.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2297 of 2020

and

C.M.P.No.14414 of 2020

1.T.Jaya
2.T.Mohan
3.T.Venkat

... 2nd Petitioners/Judgment Debtors

Vs.

P.Raja

... Respondent/Decree Holder

PRAYER: Criminal Revision Petition had been filed under Section 115 of the Code of Civil Procedure, seeking to set aside the order and decree passed in E.P.No.1639 of 2018 in O.S.No.1955 of 2005 dated 08.12.2020 by the learned IX Assistant City Civil Judge at Chennai.

For Petitioners : Mr.V.Ramamurthy

For Respondent : Mr.P.C.Hari Kumar and Associates



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ORDER

WEB COPY This Criminal Revision Petition had been filed seeking to set aside the fair order and decretal order passed in E.P.No.1639 of 2018 in O.S.No.1955 of 2005 dated 08.12.2020 by the learned IX Assistant City Civil Judge at Chennai.

2. The learned Counsel for the Petitioners invited the attention of this Court to the answers in cross-examination by the Decree Holder. It is further submitted that as per the Commissioner's report, the Respondent/Decree Holder is in enjoyment of his property and the Petitioners/Judgment Debtors is in enjoyment of their respective property. Not only that, as per the allotment, payment of property tax is in favour of the Petitioners as per Ex.R-2. In the light of this, the learned Judge had come to a wrong conclusion and allowed the Execution Petition viz., E.P.No.1639 of 2018 in O.S.No.1955 of 2005 dated 08.12.2020 and order of the detention is also passed against the Petitioners who were the second Judgment Debtors before the Execution Court. Aggrieved by the same, this Civil Revision Petition had been filed.



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3. The learned Counsel for the Petitioners invited the attention of this Court to the evidence recorded in the execution proceedings but the evidence had been ignored by the learned Judge. It is the contention of the learned Counsel for the Petitioners that they had filed Appeals in A.S.Nos.146 and 147 of 2015 and the appeals were dismissed on 20.04.2017 and against the dismissal of the Appeals, the Petitioners had filed Second Appeal Nos.373 and 405 of 2019 which are pending. It is the contention of the Respondent/Decree Holder that after dismissal of the first Appeals filed by the Petitioners/Judgment Debtors, he had put up construction. Whereas, the evidence is contradictory to the said claim. In the light of the above, the Execution Petition ought to have been dismissed. Instead, the Execution Petition was allowed and an order of detention was also passed against the Petitioners herein. Therefore, he seeks to set aside the order of detention passed by the learned IX Assistant Judge, City Civil Court, Chennai in E.P.No.1639 of 2018 in O.S.No.1955 of 2005.

4.The learned Counsel for the Respondent/Decree Holder submitted that if the arguments of the learned Counsel for the Petitioners/Judgment



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Debtors is to be accepted, the Execution Court has to travel beyond the decree. The Execution Court is expected not to travel beyond the decree.

The Execution Court has to necessarily execute the decree. Only to prolong the proceedings and to delay the execution, the Petitioners/Judgment Debtors had let in evidence that the decree is inexecutable and the Execution Petition is to be dismissed. The learned IX Assistant Judge, Execution Court, in the discussion dismissing the claim of the Petitioners/Judgment Debtors, had allowed the Execution Petition and ordered arrest and detention of the Petitioners herein as Judgment Debtor No.2 in the Execution Petition to be detained in Civil Prison for disobedience of the decree. The admission is the best evidence. In the cross-examination, the second Judgment Debtor had admitted that he had stated that he is in enjoyment of 380 Sq. Ft. as per the tax receipt. The second Petitioner herein as second Judgment Debtor is in enjoyment of 380 Sq. Ft. as per the tax receipt and 120 Sq. Ft. beyond the structure. This fact had been admitted by him in the cross-examination. The suit was decreed in favour of the Respondent/Decree Holder based on the sketch filed along with the plaint, after inspecting the property with the Assistant Executive Engineer. The learned Presiding Judge of the Executing Court had elaborately discussed



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the admission made by the Judgment Debtor as R.W-1 in his cross-examination wherein he has stated that he is not sure of the measurement of his properties. The suit filed by him as Plaintiff was dismissed and the suit filed by the Respondent/Decree Holder was decreed. The appeal preferred by the Petitioners/Judgment Debtors was also dismissed. When the second Judgment Debtor was confronted with the measurement of the property he would evade the question stating that only his mother knows the details regarding measurement. He was giving evasive reply. This was discussed by the learned Execution Judge and therefore, Execution Petition was allowed and the contention of the Judgment Debtor No.2 was rejected. Aggrieved by the same, this Civil Revision Petition had been filed. As rightly pointed out by the learned Counsel for the Respondent/Decree Holder in this Civil Revision Petition the contention of the learned Counsel for the Petitioners/Judgment Debtors is to be accepted, it amounts to illegality. If the Execution Judge had done so by permitting evidence that the Decree in the suit is inexecutable and Execution Petition being dismissed on request of the second Judgment Debtor. The learned IX Assistant Judge as Execution Court Judge had not done so.



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5.If the arguments of the learned Counsel for the Judgment Debtor No.2 is accepted, the Execution Petition has to be dismissed as not maintainable. When there is clear evidence by the Judgement Debtor as R.W-1 in admission during cross-examination that he was not aware of the measurement of the property in his enjoyment, then the filing of this Civil Revision Petition is to be treated as unacceptable in the light of the specific admission made in the cross-examination as R.W-1. In short, the Executing Court is not expected to travel beyond the decree. It is against the settled proposition of law.

6.In the light of the above discussion and as rightly pointed out by the learned Counsel for the Respondent/Decree Holder, this Civil Revision Petition lacks merit. Therefore, the same is rejected. The contention of the learned Counsel for the Respondent/Decree Holder is accepted.

In the result, this **Civil Revision Petition is dismissed** as not maintainable.

The learned IX Assistant Judge as Execution Court Judge is directed



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to pass appropriate orders in continuation of the orders passed in Execution

WEB COPY Petition No.1639 of 2018 in O.S.No.1955 of 2005. No costs.

Consequently, the connected miscellaneous petition is closed.

22.09.2022

SRM

Index : Yes / No

Internet : Yes / No

To

The IX Assistant City Civil Judge,
Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.No.2297 of 2020**

22.09.2022