



C.R.P.(NPD).No.1164 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	18.04.2022
PRONOUNCED ON	29.04.2022

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

C.R.P.(NPD).No.1164 of 2017
&
C.M.P.No.5560 of 2017

Uthirapathy

...Petitioner

Vs.

Vasudevan

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal orders passed in E.A.No.1 of 2014 in E.P.No.2 of 2012 in O.S.No.131 of 1999 dated 05.01.2017 on the file of the Court of District Munsif - cum - Judicial Magistrate, Parangipettai.

For petitioner .. Mr.A.Muthukumar

For Respondents .. Ms.G.Sumithra

ORDER

The 3rd defendant in O.S.No.131 of 1999, now pending in execution stage before the District Munsif-cum-Judicial Magistrate, Panrangipettai is the revision petitioner herein.



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2. The first and fourth plaintiffs have unfortunately died. The second and third plaintiffs alone have survived the litigation. A decree was passed on 27.10.2006 granting declaration of title with respect to suit properties in favour of the second, third and fourth plaintiffs and granting recovery of possession. Subsequently, E.P.No.2 of 2012 had been filed seeking to put into effect the decree. The second plaintiff Vasudevan filed E.P in his own name. The third defendant, had then filed E.A.No.1 of 2014 in E.P.No.2 of 2012 under Section 47 of C.P.C., stating that though the decree was in favour of the second, third and fourth defendants, the Execution petition has been filed only by the second plaintiff and therefore it is not legally maintainable and has to be dismissed. It had been stated that the legal representatives of the deceased plaintiff has also not been brought on record.

3. A counter had been filed stating that the contentions raised do not require consideration and that the said petition is not maintainable and should be dismissed.

4. The application came up for consideration before the District Munsif cum Judicial Magistrate, Parangipettai, who by an order dated 05.01.2017 dismissed the said application. In the order, it had been



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held that the issue raised would not come under the ambit of Section 47 CPC since the said provision related to questions arising between the parties to the suit and the issue relating to whether one decree holder can maintain the E.P., would not be an issue arising between the parties. The application was therefore dismissed.

5. Heard Mr.A.Muthukumar, learned counsel for the petitioner and Ms.G.Sumithra, learned counsel for the respondent.

6. Mr.A.Muthukumar, learned counsel for the petitioner had widened the scope of arguments by bringing into consideration Order XXI Rule 15 of CPC. It was pointed out by the learned counsel that in the E.P., the respondent had referred in all material places to himself only by singular and thereafter in the original records, the name of the other decree holder had been included and it is urged that interpolation or addition of the name requires to be examined since it amounts to tampering of Court orders.

7. Detailed arguments were advanced by Mr.A.Muthukumar, learned counsel for the petitioner. Ms.G.Sumithra, learned counsel for



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the respondent however contended that even if the fact that one of the decree holder has filed E.P., is taken into consideration as being an irregularity, it would not vitiate further proceedings in the E.P., which could still be maintained and such irregularity is curable in nature. The learned counsel stated that the issue whether there have been interpolation in the Court records would be an issue which can be examined only by that particular Court namely the District Munsif cum Judicial Magistrate Court. It was contended that the E.P. has been lawfully filed, correctly taken on record and proceeded with and on this narrow ground, further proceedings in the E.P should not be curtailed by this Court.

8. I have given anxious consideration to the arguments advanced. The Court also had the benefit of examining the records. As a fact only one of the decree holder has filed Execution petition.

9. Order 21 Rule 15 is as follows;

"15. Application for execution by Joint decree-holders.—(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree



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for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application."

10. The provision stipulates that if a decree had been passed jointly in favour of more person than one, then anyone of them can apply for execution but if it is so made, then the Court should ensure that the interest of the other persons, who have not joined in the execution are also protected.

11. The issue whether an Execution petition itself should be dismissed, since only one of the decree holder had filed the E.P., becomes otiose since even if one of the decree holder files an E.P., then an obligation is placed on the Court to ensure that the decree holder who is left out is adequately protected and his interest is also taken care by the Court while executing the decree. This particular procedure is only for the benefit of the decree holders and certainly



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the judgement debtor cannot take advantage of that stipulation and insist that it is a procedure which fails scrutiny of the petition.

12. It does not.

13. It is only to ensure that all the decree holders are aware of the fact that an Execution petition has been filed as the provision been incorporated.

14. The original records have been placed before this Court and Mr.A.Muthukumar, learned counsel for the petitioner drew the attention to the same. He stated that in all material places, it refers to the decree holder in singular and that the inclusion of the second decree holder is a direct tampering of the records.

15. Let me not enter into any discussion on that particular aspect but I would rather direct the District Munsiff cum Judicial Magistrate, Parangipettai to examine the original records and determine whether there has been any tampering without the knowledge or permission of the Court and if that appears to have been done, then initiate appropriate steps as against the errant staff



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concerned, who permitted such interpolations. That is an issue under the prerogative of the District Munsif cum Judicial Magistrate, Parangipettai, and I am confident that the said Officer would take steps to ensure that the Court records in his Court had not been tampered with or their sanctity is violated. Responsibility to maintain the dignity of the Court rests with the Presiding Officer of that particular Court.

16. Insofar as the revision is concerned, though reference has been made to Order XXI Rule 15 of C.P.C., a perusal of the application filed before the Executing Court shows that it had been filed only under Section 47 of C.P.C and therefore the reasonings of the District Munsif is correct and I hold that has to be sustained. The revision petitioner cannot raise this issue at the time of the Execution Petition particularly under Section 47 of C.P.C.

17. I find no reason to interfere with the well considered order of the Executing Court and would therefore dismiss the revision petition but maintain the direction issued to the District Munsif cum Judicial Magistrate Court, Parangipettai to initiate appropriate enquiry, if at all it is found that the records in that Court in the



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Execution Petition had been tampered with.

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18. With the above observations, this Civil Revision Petition stands dismissed. No costs. Connected Civil Miscellaneous Petition stands closed.

29.04.2022

Index:Yes
Internet:Yes/No
mrm

To

District Munsif - cum - Judicial Magistrate,
Parangipettai.

Note to Registry: Registry is directed to return the original records to the District Munsif - cum - Judicial Magistrate Court, Parangipettai, with a direction to forward a report whether any further proceedings have been initiated on examination of the records and if so, the nature of the proceedings initiated and if not, the reasons why such proceedings are deemed to be not required. A report in that regard may be placed by circulation before this Court.



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