



C.R.P.No.3009 of 2021
and C.M.P.No.21379 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.3009 of 2021

and

C.M.P.No.21379 of 2021

1.Pushpa

2.Kanchana

3.Jayapal

...Petitioners

Vs.

1.M.Abdul Khadar

2.Kadija Ammal

3.M.Jaleelabanu

4.Mahmood Maraikar

5.S.Abdullah

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 29.10.2021 in E.P.No.1115 of 2018 in O.S.No.7274 of 2009 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioners : Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.Jayesh B.Dolia for
Mr.T.Dharmarajan



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ORDER

This Civil Revision Petition is filed against the fair and decretal orders dated 29.10.2021 in E.P.No.1115 of 2018 in O.S.No.7274 of 2009 on the file of the IX Assistant City Civil Court, Chennai.

2. The revision petitioners are the judgment debtors in E.P.No.1115/2018 in O.S. No.7274/2009 on the file of the IX Assistant City Civil Court, Chennai. The respondents/decreed holders filed the Execution Petition for delivery of vacant possession of the suit 'B' schedule property as per the decree passed in O.S. No.7274/2009. The civil revision petitioners/judgment debtors filed a counter stating that E.P.1115/2018 was filed on the basis of an *ex parte* decree and that the court which passed the decree does not have the pecuniary jurisdiction to try the suit. The learned IX Assistant Judge, City Civil Court, Chennai, after considering the rival submissions of both the parties allowed the Execution Petition and ordered delivery of vacant possession of 'B' schedule property.



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3. Aggrieved over the same, the present Civil Revision Petition is filed.

4. Heard Mr.I.Abrar Mohamed Abdullah, learned counsel appearing for the revision petitioners and Mr.Jayesh B.Dolia, learned counsel appearing for the respondents.

5. The facts of the case are briefly elicited below:

- (a) The plaintiffs/decreed holders purchased 1/5 undivided share of land situate in Madhavaram Sembium Village, Purasawakkam Perambur Taluk, Chennai District comprised in Survey No.3 (as per document) Survey No.3/1 part (as per patta, T.S. No.13, Block No.3 measuring an extent of 10 grounds through a registered sale deed from one Dr.Anusuya Devi represented by her Power of Attorney Dr.Udaya Baskar.
- (b) The case of the plaintiffs is that subsequent to the purchase, several persons encroached upon the property and the defendants are one



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WEB COPY among them who had encroached upon 2000 sq.ft.

(c) Therefore, the plaintiffs filed a suit in O.S. No.7274 /2009 on the file of the VI Assistant Judge, City Civil Court, Chennai against the defendants for delivery of vacant possession of the land after demolishing the superstructure put up by the defendants over 2000 sq. ft.

(d) The defendants filed their written statement in which they had contended that the 1st defendant purchased the suit property measuring 2175 sq. ft. from one from one R. Anuradha Power of Attorney of Dr. Anusuya Devi through a registered sale deed and that the vendor of the plaintiffs Dr. Udaya Baskar filed a suit in O.S. No.7095/2007 before the VIII Assistant City Civil Court, Chennai, against the defendants therein for a permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the suit property and the same was dismissed as withdrawn on 11.01.2010.

(e) The trial court decreed the suit in O.S. No.7274/2009 on



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- (f) The plaintiffs filed E.P. No.1115/2018 to execute the decree in which the defendants did not enter appearance, therefore, they were set *ex parte* and an *ex parte* order was passed on 11.09.2018.
- (g) Thereafter, the defendants filed E.A. No.3886 of 2018 in E.P. No.1115 of 2018 to set aside the *ex parte* order passed in the Execution Petition and the same was dismissed.
- (h) The defendants preferred a revision against the said orders in CRP No.3606/2019 and the same was allowed. This Court directed the Executing court to dispose of the Execution Petition within a period of two months.
- (i) Thereafter, the defendants filed an appeal in A.S. SR. No.3737/2020 before the Principal City Civil Court, Chennai, along with a petition in I.A. No.1/2020 under Section 5 of the Limitation Act to condone the delay of 1802 days in filing the appeal.
- (j) The said application was dismissed by the Principal Judge, City



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Civil Court as against which, a Civil Revision Petition was filed in
CRP (NPD) No.2725/2021.

(k) The learned Single Judge of this Court vide orders dated
10.02.2022 dismissed the said CRP by stating that the defendants
have not shown sufficient cause to condone the delay of 1802 days.

6. In the Execution Proceedings, the revision petitioners had
taken up a stand that the trial court even without pecuniary jurisdiction had
passed the decree and therefore, the same cannot be executed. The
Executing Court in its orders dated 29.10.2021 had observed as follows:

*"In the case reported in (2008) 1 CTC 268 the
Hon'ble Supreme Court has held that the executing court
cannot go beyond the terms of the decree. Executing Court
can go into validity of the decree only when the decree has
been passed by the court without jurisdiction or when the
decree has been obtained by fraud.*

*On the basis of the above citations and the
argument of Respondents/JDs that the decree was passed by
the court concerned without the pecuniary jurisdiction this*



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court verified the Ex.R3 to R7 the sale deed of petitioners which shows through five documents 10 grounds was sold for 40 lakhs. it is verified with Ex.P7. Judgment in O.S. No.7274/2009 and decree in O.S. No.7274/2009 reveals that the suit was filed for recovery of possession of B schedule that is 2000 sq. ft. hence the petitioner/decreed holder value the suit for a sum of Rs.3,40,000/- and paid court fee under Section 30 of Tamil Nadu Court Fees and suit Valuation Act 1955.

Moreover the respondents/JDs side argued that the decree in O.S. No.7274/2009 was obtained by fraud. The respondents have not produced any evidence for proving the same. Hence the contentions of the respondents/JDs fails to come into the bracket of either of the two categories mentioned in (2008) 1 CTC 268.

The respondents/JD's learned counsel in his arguments stated that O.S. No.7274/2009 was restored without the respondents knowledge and no notice was served to them. In this regard this court had verified the Hon'ble PJ court order in I.A. No.1/2020 in A.S. SR No.3737/2020 which reveals that the petitioners are taking the same



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ground before the Hon'ble Principal Court. The Hon'ble Principal Court call for the entire bundle and it is found that the allegations stated by the respondents is false one and subsequently the above mentioned I.A. No.1/2020 for condone the delay of 1839 days in preferring the appeal was dismissed on 19.03.2021.

The respondents are alleging that the ownership of the suit property would be decided by this court. But as per the above mentioned citation, this EP Court does not have any power to decide the ownership of the suit property and this court cannot go beyond the decree. Hence, the allegations of the respondents is not admissible by this Court."

The above observations of the Executing Court are unassailable. Moreover, it is pertinent to point out that the petitioners did not adduce any documentary evidence to show that the value of the B schedule property is more than Rs.3,40,000/-. In the circumstances, it cannot be held that the trial court had exceeded his jurisdiction by decreeing the suit in O.S. No.7274/2009 and I do not see any infirmity in the orders passed



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7. In the result,

- i. this Civil Revision Petition dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the fair and decretal orders dated 29.10.2021 in E.P.No.1115 of 2018 in O.S.No.7274 of 2009 on the file of the IX Assistant City Civil Court, Chennai, is upheld.

12.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

- 1.The IX Assistant City Civil Court, Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.

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