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C.R.P.No.2226 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.2226 of 2017
and C.M.P.No.10604 of 2017

1. Mohamed Sharif (died)
 2. Halima Beevi
 3. Ayarounicha
 4. Mohamadou Ibrahime
 5. Kamal Batcha
 6. Mohamad Lloridine
 7. Radjina Begame
- (P2 to P7 brought on record
as LR's of the deceased P1
viz Mohamed Sharif vide
Court order dated 28.10.2021
made in C.M.P.No.5390 of 2018
in C.R.P.No.2226 of 2017)

.. Petitioners

Vs.

1. Ammaji
2. Mumtaz
3. Faritha Bevi

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India challenging the order and decretal order in I.A.No.1883 of 2008 in O.S.No.472 of 1969, on the file of 1st Additional District Munsif, Puducherry, dated 02.01.2017.



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For Petitioners : Mr.Avinash Wadhwani
for Mr.V.Raghavachari
For R1 to R3 : Mr.P.Dinesh Kumar
for Mr.D.Ravichander

ORDER

This Civil Revision Petition has been filed as against the order and decreetal order in I.A.No.1883 of 2008 in O.S.No.472 of 1969, on the file of 1st Additional District Munsif, Puducherry, dated 02.01.2017, thereby allowing the petition seeking amendment of the decree.

2. Heard, Mr.Avinash Wadhwani, learned counsel appearing for the petitioners and Mr.P.Dinesh Kumar, learned counsel appearing for the respondents 1 to 3.

3. The petitioners 2 to 7 herein are the legal heirs of the original Judgment debtor. The respondents herein are the legal heirs of the original deceased plaintiff. The deceased plaintiff filed a suit for declaration and recovery of possession in O.S.No.472 of 1969 in respect of the subject property, which is as follows:-

SCHEDULE

“Manai at Sulthanpet, Villianur commune, Pondicherry



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*North of Railway Property Manai
West of the Road leading C.Arasur
South of Karukku Marathu Street
East of Manai belonging to Noor Sa Abdul Wahab Sahib”*

4. The said suit was decreed on 28.03.1972. Aggrieved by the same, the deceased defendant filed an appeal suit in A.S.No.62 of 1972 and the same was dismissed by the Judgment and Decree dated 05.12.1972. Aggrieved by the same, the deceased defendant also preferred second appeal in S.A.No.195 of 1973 and the same was dismissed in the year 1976. However, the deceased plaintiff did not file any execution petition to execute the decree passed in O.S.No.472 of 1969. The deceased plaintiff filed an execution petition only in the year 2004, in E.P.No.71 of 2004. The deceased defendant raised his objection that the schedule mentioned property in the decree is very vague and it is filed without any reference with regard to survey number and extent of the property. Therefore, the deceased defendant filed an application in E.A.No.29 of 2006 in E.P.No.71 of 2004. In fact, the deceased plaintiff filed a counter stating that they are able to take delivery of possession with the particulars mentioned in the decree and survey numbers and extent is not necessary. Therefore, the E.A.No.29 of 2006 was dismissed



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by the execution Court. Thereafter, the plaintiff went to the suit property and sought assistance of revenue officials. However, they were not able to identify the property without the survey number and extent of the property. The revenue officials also stated that the schedule of property is very vague and without any particulars.

5. Therefore, the deceased plaintiff had again filed an application in E.A.No.228 of 2007 in E.P.No.71 of 2004 for direction directing the Amin to execute the delivery of warrant in respect of the suit schedule property and the same was allowed and aggrieved by the same, the petitioners herein preferred Civil Revision Petition before this Court in C.R.P(NPD).No.3629 of 2007. It was allowed by this Court by an order dated 21.11.2007. However, this Court observed that the respondents shall move before the Trial Court with an appropriate application to amend the decree and then to file a fresh execution petition seeking appropriate remedy in accordance with law. Therefore, the respondents filed an application in I.A.No.1883 of 2008 in O.S.No. 472 of 1969, seeking amendment of the decree. The amendment sought for in the application in I.A.No.1883 of 2008 in O.S.No. 472 of 1969, as follows:-



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““ Amendment No.1 In short cause title
After the name 'Ahishabibi' Add
'(died)'

Amendment No.2: In short cause title:
After the word 'Tindivanam Taluk Add
Rep. by legal heirs 1. Ammaji w/o.Ziyavudeen 2.
Mumtaj, w/o Tamimu Ansari 3. Farithabivi,
w/o.Abdul Rashidu,All are residing at New No.337,
Old No.16 M.L.Street, Kottakuppam, Vanur Taluk,
Tamil Nadu. All are represented by their power
agent Mohamad Thaga s/o.Ahamad Sha.

Amendment No.3 In the Schedule of Property
After the words “Manai at Sulthanpet,
Villianur Commune, Pondicherry Add Cadastre
No.604/2/3/61/61, Re-Survey No.2096/7, Extent
H.O.A.04,C.00 surrounded”.

Therefore, it is prayed that this Hon'ble
Court may be pleased to amend the decree passed in
O.S.No.472 of 1969 as per the details given above
pursuant to the order of the Hon'ble High Court of
Madras in C.R.P.(NPD) No.3629 of 2007 dated
21.11.2007 and thus render justice”.

6. In the said application, the petitioners filed a detailed counter and subsequently averred that the execution petition itself is barred by limitation and the decree cannot be amended in a simplicitary manner without any iota of evidence. The suit is of the year 1969 and the same was decreed on 28.03.1972. However, the respondents failed to file any execution petition, within a period of twelve years. They filed an



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execution petition only in the year 2004. That apart, this Court while allowing the Civil Revision Petition filed by the petitioners, observed that the respondents shall file a petition to amend the decree in accordance with law. However, the respondents filed a petition seeking amendment without any reason for the delay in filing the petition seeking amendment of decree that too without any material to show that the suit property and the survey numbers mentioned in the amendment petition are one and the same.

7. A perusal of impugned order passed by the Trial Court noted that the petitioners did not file any counter and no oral and documentary evidence was produced by both sides. The Deputy Tahsildar was examined as CW1 and Exs.C1 to 3 were marked. The Trial Court directed the Deputy Tahsildar to identify the suit property as per the amendment sought for by the respondents herein. In fact, the Deputy Tahsildar inspected the property which is comprised in Re-Survey No.209/7 and found that it is in the name of Judgment Debtor and his children. The said extract was marked as Ex.C2. However, there is no other document to show that the suit schedule property and the property



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mentioned in the amendment petition are one and the same. However, it is curious to note that the Court below concluded that there is no mention how the said survey number belonged to them was not explained by the petitioners herein. In fact, in the absence of specific pleading to the said effect, the Trial Court *prima facie* satisfied that the re-survey number to the suit property is 209/7. It further concluded that there is no proof produced by the petitioners herein to show that it does not correlate with the boundaries mentioned in the plaint.

8. It is well settled law that the respondents, who sought for amendment, have to prove their case with oral and documentary evidence. They simply added the property standing in the name of the petitioners in Re-survey No.209/7 and sought for an amendment in the decree. The Court below further concluded that the delivery was ordered in E.P.No.71 of 2004 as early as on 08.11.2006 and thereafter only the problem of inability to identify the suit property arose and a petition came to be filed seeking amendment of decree. Therefore, the petition seeking amendment is filed within the period of limitation. Further, observed that there are courses open to the petitioners herein to adjudicate the executability of



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the amended decree if execution petition is filed by the respondents herein. At this stage it is needless to adjudicate into the title of the respondents herein in the proposed re-survey number because prima facie evidence to correlate the suit property is available on record.

9. A perusal of records revealed that except mentioning the re-survey number as 209/7 in the petition seeking amendment, no other oral and documentary evidence was produced by the respondents to co-relate the said property as well as the proposed property in the amendment petition. The prayer sought for by the person has to prove his case with oral and documentary evidence. The opposite party need not prove the other party's case. That apart, when this Court allowed the Civil Revision Petition filed by the petitioners in C.R.P.No.3629 of 2007, the respondents were directed to file a petition seeking amendment decree and the same may be considered in accordance with law. It does not mean that the Court below was directed to allow the petition seeking amendment. The Court below without even noticing the date of original decree i.e, 28.03.1972, after a period of 36 years, the respondents filed a petition seeking amendment of the decree passed in O.S.No.472 of 1969.



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It is clearly barred by limitation.

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10. A perusal of the decree passed in O.S.No.472 of 1969, simply mentioned the boundaries and without survey numbers of the property. In fact, the respondents counter in E.A.No.29 of 2006 in E.P.No.71 of 2004 stated that they are able to take delivery of possession with the particulars mentioned in the decree and survey number and extent of the property are not necessary. Therefore, they are estopped from praying to include the survey number and the extent of the property in the decree.

11. The Deputy Tahsildar inspected the suit property comprised in Re-Survey No.209/7 stands in the name of the petitioners herein. It does not mean that the said suit property is the schedule mentioned in the decree. Admittedly, the respondents failed to adduce any oral and documentary evidence to prove that both the properties are one and the same.

12. The learned counsel for the petitioners also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2008 5 SCC**



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in the case of ***Kanagavalliammal and others Vs.***

R.Balasubramanian, in which it was held that when the execution petition was filed after a period of 12 years, it is clearly barred by limitation and the execution petition is not maintainable. In the case on hand also, the decree was passed in O.S.No.472 of 1969 on 28.03.1972 and the same was confirmed in the year 1976 in S.A.No.195 of 1973. Whereas, the execution petition was filed in the year 2004 in E.P.No.71 of 2004. Therefore, the execution petition itself is not maintainable and it is liable to be dismissed.

13. Accordingly, the execution petition in E.P.No.71 of 2004 is hereby dismissed and the order in I.A.No.1883 of 2008 in O.S.No.472 of 1969, on the file of 1st Additional District Munsif, Puducherry, dated 02.01.2017, is hereby set aside.

14. Accordingly, this Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.



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

G.K.ILANTHIRAIYAN,J.

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To

The 1st Additional District Munsif, Puducherry.

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and C.M.P.No.10604 of 2017

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