



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3882 of 2022
and
C.M.P.No.20366 of 2022

T.Panduranagan

... Petitioner

Versus

Sri Kannabiran Temple,
Rep by its Hereditary Trustee,
M.Jayaraman

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 21.09.2022 passed by the IX Assistant Judge, City Civil Court, Chennai, in EASR.No.50690 of 2022 in EP.No.4011 of 2019 in OS.No.1513 of 2001 and allow the same.

For Petitioner : Mr.A.D.Janarthanan

ORDER

This Civil Revision Petition is filed challenging the docket order passed by the court below dated 21.09.2022 dismissing the Execution Application



filed by the petitioner in EASR.No.50690 of 2022 in EP.No.4011 of 2019 in OS.No.1513 of 2001 on the file of the IX Assistant City Civil Court, Chennai.

2. The respondent herein has filed a suit for recovery of possession of suit 'B' schedule property after removal of superstructure in O.S.No.1513 of 2001 on the file of the IX Assistant City Civil Judge, Chennai and obtained a decree. The same was confirmed by this court in S.A.No.311 of 2017.

3. Even in the said suit, the petitioner herein had raised a point that the property in occupation of the petitioner/Judgement Debtor was altogether a different property from the 'B' schedule property. The said point was considered and negatived by this court in SA.No.311 of 2017. The relevant observation of this court is as follows:

“25. The respondent / plaintiff / Temple prays for recovery of 'B' schedule property which is allotted in S.No.16, Sembium Village and according to the 2nd Commissioner's report dated 23.12.2017 (Ex.C2 series) from the Town Survey Register maintained by the office of the Tahsildhar, Perambur Taluk, S.No.16 was earlier divided into four parts and subsequently assigned New S.Nos. 10,15,16,17 respectively and from the sketch given by the Tahsildhar office, the schedule 'A' property lies in the New S.No.17



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which was earlier S.No.16 as per the town Survey register. Thus, the S.No.16 which lies in S.No.17 as per the 'B' Schedule property for which delivery of possession is sought, the defendant is in occupation of 120 feet of land in S.No.16 and in the light of the observation made by this Court in Paragraph Nos.12 and 13 of SA.No.981/2014 vide judgment dated 12.02.2015, the appellant / defendant is bound to deliver possession of the 'B' Schedule property which is in his occupation. Learned counsel appearing for the appellant/defendant made valiant attempt in trying to convince the Court that the property in occupation is altogether a different property namely the Government poromboke land in which the appellant/ defendant has encroached upon and as such the decree for delivery of possession cannot be given. It is also pertinent to point out at this juncture that though in the written statement, the defendant has altogether denied Exs.A2 and A3, however, in the course of his evidence as DW1, he has admitted about the request made under Ex.A2 and granting of the same under Ex.A3 and therefore, he is not entitled to take back the said admission.

26. In the considered opinion of this Court, the findings recorded by the Lower Appellate Court is based upon proper appreciation of oral and documentary evidence and also in the light of judgment of remand passed by this Court in S.A.No.918/2014 dated 12.02.2015. There is no perversity attached to the said findings. “



4. After dismissal of the S.A.No.311 of 2017 filed by the revision petitioner, the respondent/decreed holder filed an execution petition in E.P.No.4011 of 2019 for executing the decree for delivery of vacant possession of suit property in the execution proceedings. The petitioner herein has filed a petition under Section 47 of CPC in EASR.No.50690 of 2022, raising the same point that the suit 'B' schedule property was different from that of the property in possession of the petitioner. The executing court by order dated 21.09.2022, rejected the application filed by the petitioner mainly on the ground that the very same point was raised by the petitioner before this court in SA.No.311 of 2017 and the said plea was considered and negatived by the High Court and consequently, it was not open to the petitioner to raise the very same point before the executing court.

5. It is settled law that the points which were raised in the suit and confirmed in the Second Appeal cannot be re-agitated by way of filing of an application under Section 47 of the CPC. Therefore, I do not find any error in the order passed by the court below. Hence, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.



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6. The respondent/deed holder is entitled to recover the possession of the 'B' schedule property as per the deed confirmed in S.A.No.311 of 2017.

28.11.2022

Internet: Yes
Index: Yes/No
gv

To

The IX Assistant Judge,
City Civil Court,
Chennai,



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S.SOUNTHAR, J.

gv

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