



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) Nos. 1801 & 1863 of 2012

and

MP (MD) .No. 1 / 2012 and MP (MD) .No. 1/2012

WEB COPY

C.R.P. (MD) No. 1801 of 2012

Vairavan Chettiar

...Revision Petitioner/ Respondent /
3rd Defendant / Judgment Debtor /

Vs.

A.R. Ramasamy Chettiar

...Respondent Petitioner /
Plaintiff / Decree Holder

Prayer: Civil Revision petition filed under Section 115 of C.P.C., against the order and decretal order dated 03.08.2012 in E.P.No.10 of 2007 in O.S.No.20 of 1997 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal.

For Petitioner : Ms.AL.Ganthimathi
For Respondent : Mr.V.R.Shanmuganathan

C.R.P. (MD) No. 1863 of 2012

A.R. Ramasamy

... Petitioner / Petitioner /
Plaintiff / Decree Holder

Vs.

Vairavan Chettiar

... Respondent / Respondent /
3rd Defendant / Judgment Debtor

Prayer: Civil Revision petition filed under Section 115 of C.P.C., to call for and set aside the fair and decretal order dated 03.08.2012 in E.P.No.10 of 2007 in O.S.No.20 of 1997 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal and allow the civil revision petition.

For Petitioner : Mr.V.R.Shanmuganathan
For Respondent : Ms.AL.Ganthimathi



C O M M O N O R D E R

These two civil revision petitions arise out of E.P.No.10 of 2007 filed by Thiru.A.R.Ramasamy Chettiar. A.R.Ramasamy Chettiar is the petitioner in C.R.P.(MD)No.1863 of 2012 and the respondent in C.R.P.(MD)No.1801 of 2012. He filed O.S.No.20 of 1997 for passing final decree based on the preliminary decree for rendition of accounts passed in O.S.No.9 of 1977 on the file of the Sub Court, Devakottai. Final decree was passed decreeing his claim for a sum of Rs.48,83,389/- with interest @ 6% p.a. to be calculated with effect from 26.10.2006. The said decree has since been confirmed in S.A.(MD)No.780 of 2010 by this Court today. In the meanwhile to enforce the decree, Thiru.Ramasamy Chettiar filed E.P.No.10 of 2007. In the said E.P., order was passed on 03.08.2012 bringing the building in question for sale. The building belongs to the other revision petitioner Vairavan Chettiar / third defendant in the suit. The executing Court has valued the building at Rs.90,00,000/- and has ordered that the building alone will be brought to sale and not the land. Aggrieved by the said order, the decree holder has filed C.R.P.(MD)No.1863 of 2012. Contending that the land is measuring an extent of 84 cents, while the building is located on 16 cents and that one of the judgment debtors alone cannot be mulcted with liability, C.R.P.(MD)No.1801 of 2012 has been filed. There is consensus between both the revision petitioners that the Court below could not have passed an order for bringing to auction the building alone dehors the land.

2. I am satisfied that such an order could not have been passed. It is not possible to divorce the building from the land. A person who takes the building will for all practical purposes take the land also. Since the land has not been valued, the person taking the building will definitely be unjustly benefited. Therefore, the impugned order definitely calls for interference. There is another reason for doing so. The impugned order was passed way back in the year 2012. We are now in 2022. A full decade has passed. Therefore, in the very nature of things, the exercise of valuation will have to be re-done.

3. Vairavan Chettiar / third defendant cannot be heard to say that the decree holder cannot proceed against the property in question. The property in question was inherited by him from his father. His father was the first defendant in the suit. Of course, following the demise of the father, all the sons were brought on record and joint decree was passed against them. A person who is a joint judgment debtor is in the analogous position of a guarantor. It is open to the decree holder to proceed against any property of any of the judgment debtors on which he can lay hands. The judgment debtor concerned cannot escape liability by claiming that he has only a joint liability. The executing Court is obliged to proceed against all the judgment debtors so that the claim of the decree



holder can be satisfied in full. Thereafter, the judgment debtor can proceed against the other judgment debtors for recovering their share of the decretal liability.

4. In this view of the matter, the order impugned in this civil revision petitions is set aside. The matter is remitted to the file of the District Munsif cum Judicial Magistrate, Kodaikanal. The executing Court will take up the matter afresh and dispose of the E.P. on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. The executing Court will bear in mind that the object of the execution is only to satisfy the decree. Even according to the decree holder, the amount payable comes to Rs.48,83,389/- with interest @ 6% p.a. to be calculated with effect from 26.10.2006. The land in question is said to measure around 84 cents. The Court below shall undertake a separate valuation exercise for the land as well as the building. In other words, if it is possible to parcel out a piece of land and if sale of the parceled out land can satisfy the decree, the building has to be spared. There cannot be excess execution.

5. With these observations and clarifications, both the civil revision petitions are allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The District Munsif cum Judicial Magistrate,
Kodaikanal.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



+2 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-9531[F],9530 dated
02/03/2022)

C.R.P. (MD) Nos. 1801 & 1863 of 2012
01.03.2022

SS (CO)

KB(21.04.2022) 4P 6C