



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	25.03.2022
DELIVERED ON	19.04.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P. (MD)No.625 of 2022
and
C.M.P. (MD)No.2589 of 2022

1.G.Ramesh
2.R.Anusya

...Petitioners/Petitioners/3rd parties

Vs.

1.A.Kamatchi @ Kamatchia Pillai
2.A.Tamilselvan

...Respondents/Petitioners/Petitioners

PRAYER: Civil Revision Petition under Section 115 of Civil Procedure Code to set aside the fair and executable order dated 02.03.2022, made in E.A.No.53 of 2021 in E.P.No.27 of 2008 on the file of the learned District Munif, Vadipatti.

For Petitioners :Mr.R.Suriya Narayanan

For Respondents :Mr.K.K.Ravie

ORDER

This Civil Revision Petition has been filed by the revision petitioners to set aside the fair and executable order, dated 02.03.2022 in E.A.No.53 of 2021 in E.P.No.27 of 2008 on the file of the learned District Munif, Vadipatti.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The petitioners have filed an application in E.A.No.53 of 2021 in E.P.No.27 of 2008 under Order 21 Rule 97 & 99 of Civil Procedure Code to declare the properties in S.No.13/2 belonged to them on the basis that part of the E.P. schedule property was purchased by these petitioners on 17.12.2012. The vendor of the petitioners had purchased the property on 24.02.2000. The previous title holders were also in possession from 1954 and without impleading them, the present suit was filed.



4. Heard on either side. Perused the material documents available on record.

5. This Civil Revision Petition is filed on the ground that the Court below has dismissed the petition on the ground that the petitioner is not a Judgment debtor and he has not been dispossessed and hence no locus standi or the petition is premature one, is incorrect and illegal. The Court below has failed to see that the suit and the decree obtained by the respondents are fraudulent one, as the original owner of the suit property sold out the same even in the year 1965 but suppressed the said fact the suit is filed and collusive decree is obtained against and support of the alleged lessee, and in execution petition trying to take possession of the petitioner's property, hence illegal. The order passed by the Court below is liable to be set aside.

6. To prove their claim the petitioners have filed documents from the year 1954.

7. All the Judgment discussed in the order of the Execution Court is to avoid false claim by way of obstruction. But, in this case the petitioners have filed documents to support their petition.

8. So, the Execution Court must decide the title of the objectors as claimed in the petition and only after deciding the title, it can proceed with the execution petition.

9. The learned counsel appearing for the respondent/decreed holder relied upon the Judgment reported in **2021(2) MWN (Civil) 578, Rahul S. Shah Vs. Jinendra Kumar Gandhi & Others**, in which the Hon'ble Supreme Court has issued the following guidelines:

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.



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3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

5. The Court must, before passing the decree, pertaining to

6. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

7. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

8. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

9. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

10. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of



Commissioner or calling for electronic materials including photographs or video with affidavits.

11. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

12. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

13. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

14. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

15. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.

10. But in the case on hand, the petitioners are not party to the suit, but admittedly they are in possession. They claimed title and possession from the year 1954. Without deciding the matter, the Execution Court cannot order recovery of possession.

11. The Court has to protect the rights of true owner. The Judgment in **Civil Appeal No.9699 of 2014 (Arising out of S.L.P. (Civil) No.33699 of 2011), Sameer Singh Vs. Abdul Rab**, in which the Hon'ble Supreme Court held as follows:

"15. The submission of the learned counsel for the appellants is that if the scheme underlying the said Rules is appositely



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appreciated, it is clear as crystal that the legislature in order to avoid multiplicity of proceedings has empowered the executing court to conduct necessary enquiry and adjudicate by permitting the parties to adduce evidence, both oral and documentary, and to determine the right, title and interest of the parties and, therefore, such an order has been given the status of a decree. As has been put forth by him, a proceeding in terms of Rule 97 or Rule 99 is in the nature of a suit and the adjudication is similar to that of a suit and when in the case at hand, the Court has declined to embark upon any enquiry by calling for reply, recording evidence and appropriately adjudicating the controversy, the order passed cannot be regarded under Rule 103 of Order XXI as a decree. In this context, the authorities that have been commended to us need to be carefully noticed.

16. In Noorduiddin v. Dr. K.L. Anand[5], the executing court had rejected the application of the appellant therein on the ground that the High Court had already adjudicated the lis. Analysing the language employed in Rules 97, 98 and 100 to 104, the Court held:-

"Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution



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and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution." Elucidating further, the Court opined that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice and, therefore, adjudication under Order XXI, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

17. In Babulal (supra), the appellant apprehending that it would be dispossessed in an execution proceeding had filed an application based on possessory title and obtained interim injunction. He had also filed an application stating, inter alia, that he should not be dispossessed. His objection was overruled by the executing court holding that since he had not been dispossessed, an application under Order XXI, Rule 98 was not maintainable. The said view was affirmed by the High Court in Civil Revision Petition. The Court while interpreting the Order XXI, Rules 98 to 102 referred to the decision in Bhanwar Lal v. Satyanarain and Another[6] and opined that it is clear that an adjudication is required to be conducted under Order XXI, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The Court ruled that the order is treated as a decree under Order XXI, Rule 103 and it is subject to an appeal. It has been observed in the said case that prior to 1976, the order was subject to suit, but under the amended Code, right of suit under Order XXI, Rule 63 of old Code has been taken away, and the determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order XXI, Rule 98 which is an order and is a decree under Order XXI, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. The Court further opined that the procedure prescribed is a complete code in itself and, therefore, the executing [pic]court is required



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to determine the question.

18. In *Ghasi Ram and Others* (supra) while making a distinction between the provisions prior to the amendment brought in 1976 in CPC and the situation after the amendment, a two-Judge Bench observed thus:-

"The position has changed after amendment of the Code of Civil Procedure by the Amendment Act of 1976. Now, under the amended provisions, all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit."

19. In the case of *S. Rajeswari* (supra), the appellant was one of the persons who had obstructed the execution of a decree obtained by the 1st respondent therein and had filed an application under Section 151 of CPC which was rejected by the executing court on the ground that it was not maintainable. Being grieved by the said order he preferred a revision petition which was allowed by the High Court. The Court treated the application preferred under Section 151 of C.P.C. to be one under Order XXI, Rule 97 because the executing court proceeded to record evidence and thereupon adjudicated the matter. The evidence of the decree-holder was considered and a conclusion was arrived at that the identity of plot in question had not been established and thereby the plaintiff was disabled from executing the decree for possession of the land. A contention was raised before this Court that the High Court had erred in entertaining a revision petition under Section 115, C.P.C., for the order was a decree under Order XXI, Rule 103 of C.P.C. and hence, an appeal lay. The said contention was accepted by this Court.

20. At this juncture, we may refer with profit to the pronouncement in *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and another*[7] wherein a two-Judge Bench scanning the anatomy of the rules came to hold that:-

"... a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance



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therefore, an appeal should have been filed, and resultantly allow the appeal and set aside the impugned order. The High Court shall decide the matter as necessary under Article 227 of the Constitution of India. As a long span of time has expired we would request the High Court to dispose of the matter within a period of three months. There shall be no order as to costs.

12.In this case the revision petitioners have claimed their rights over the property through the documents from the year 1954. So, the Execution Court has to decide the matter on merits.

13.Finally, this Civil Revision Petition is allowed by setting aside the order, dated 02.03.2022 in E.A.No.53 of 2021 in E.P.No.27 of 2008 on the file of the learned District Munsif, Vadipatti. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

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

The District Munsif,
Vadipatti.

+1 CC to M/s.K.K. RAVIE, Advocate (SR-19853[F] dated 20/04/2022)

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-19831[F] dated 20/04/2022)

C.R.P. (MD) No. 625 of 2022

19.04.2022

RD(28.04.2022) 10P 4C