



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

DATED : 04.02.2022

CORAM :

C.R.P(MD)Nos.272 and 273 of 2017

and

C.M.P(MD)No.1278 of 2017

WEB COPY

1.Rethinamony

2.Bai

... Petitioners/Respondents/
Petitioners/Plaintiffs in both C.R.Ps

Vs.

Lalitha

... Respondent/Petitioner/
Respondent/Defendant in both C.R.Ps

Prayer in C.R.P.(MD)No.272 of 2017: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order passed in E.A.No.80 of 2015 in E.P.No.83 of 2014 in O.S.No.176 of 2012, dated 19.10.2016 on the file of the Principal District Munsif, Kuzhithurai.

Prayer in C.R.P.(MD)No.273 of 2017: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order passed in E.P.No.83 of 2014 in O.S.No.176 of 2012, dated 19.10.2016 on the file of the Principal District Munsif, Kuzhithurai.

For Petitioners in
both C.R.Ps : Mr.M.R.Sreenivasan

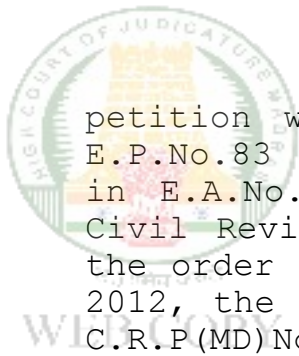
For Respondent
in both C.R.Ps : Mr.S.Venkatesh

COMMON ORDER

The civil revision petition in C.R.P.(MD)No.272 of 2017 is filed to set aside the order and decreetal order dated 19.10.2016 passed in E.A.No.80 of 2015 in E.P.No.83 of 2014 in O.S.No.176 of 2012, by the Principal District Munsif, Kuzhithurai.

2.The civil revision petition in C.R.P(MD)No.273 of 2017 is filed to set aside the order and decreetal order dated 19.10.2016 passed in E.P.No.83 of 2014 in O.S.No.176 of 2012, by the Principal District Munsif, Kuzhithurai.

3.The revision petitioners are the plaintiffs filed a suit in O.S.No.176 of 2012, for mandatory injunction before the I Additional District Munsif, Kuzhithurai and the suit was decreed, on 07.04.2014. Therefore, the petitioners filed an execution petition in E.P.No.83 of 2014 before the Principal District Munsif, Kuzhithurai. During the pendency of the said execution petition, the petitioner filed an application in E.A.No.80 of 2015 under section 47 CPC and Order 21 Rule 100 C.P.C., to decide all the questions arising between the decree holder and the judgment debtor in the execution proceedings relating to execution, discharge and satisfaction of the decree in the execution petition. The said



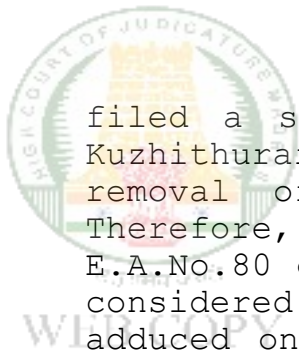
petition was allowed and consequently, the execution petition in E.P.No.83 of 2014 was also dismissed. Challenging the order passed in E.A.No.80 of 2015, the respondents therein filed the present Civil Revision Petition in C.R.P(MD)No.272 of 2017 and challenging the order of dismissal passed in E.P.No.83 of 2014 in O.S.No.176 of 2012, the revision petitioners filed the Civil Revision Petition in C.R.P(MD)No.273 of 2017 before this Court.

4.Since the issue involved in both the petitions are interlinked, they are taken up together, heard and disposed of through this Common Order.

5.The learned counsel appearing for the revision petitioners would submit that the revision petitioners originally obtained decree for permanent injunction in O.S.No.434 of 2009 before the I Additional District Munsif, Kuzhithurai, against the respondent, on 16.08.2010. Subsequently, the revision petitioners filed another suit in O.S.No.176 of 2012, before the I Additional District Munsif, Kuzhithurai, for mandatory injunction to remove the shed unlawfully constructed in the northern side of plaint schedule property, since the respondent violated the decree passed in O.S.No.434 of 2009 and put up a shed. Though the respondent herein has filed a written statement, she did not participate in the trial and hence, decree was passed against her. The respondent has not taken any steps to set aside the said decree passed on merits in O.S.No.434 of 2009. The learned counsel would further submit that the learned Principal District Munsif, cannot decide the execution application as one of appeal and the only course open to the respondent is to file an appeal against the decree passed in O.S.No.176 of 2012 and not file a claim petition. The respondent, having been a party to the above two suits and having not made out any case, is not entitled to file this application under Section 47 of CPC. Further the learned counsel would submit that the Executing Court cannot go beyond the decree and it has to execute the decree, whereas the Executing Court, without considering the legal as well as the factual position, dismissed the execution petition and also allowed execution application, which warrants interference of this Court.

6.The learned counsel appearing for the respondent would submit that the respondent is the co-owner of the property mentioned in the decree, in the execution petition, Plot No.5 in Old Survey No.2294A was allotted to the legal heirs of Kumareswamy Nadar, including the respondent's father viz., Thankappan and therefore, the said Thankappan has got right title and possession in respect of 1/4th share in the said Plot No.5 vide partition deed executed in the year 1951 and thereafter, on 17.03.2009, the said Thankappan executed a settlement deed in respect of 0.812 square links in favour of the respondent and she was put in possession in the northern portion of Plot No.5, wherein there is a residential building and the remaining area belongs to the decree holder, but the petitioners herein

<https://hcspreports.com/hcspreports/> rights of the respondent herein in Plot No.5 and



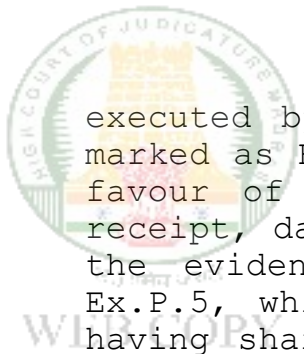
filed a suit in O.S.No.434 of 2009 before the District Munsif, Kuzhithurai and obtained a decree for mandatory injunction for removal of building on the northern side of the plot No.5. Therefore, the respondent filed an execution application in E.A.No.80 of 201 in O.S.No.176 of 2012. The Executing Court rightly considered the entire oral and documentary evidence produced and adduced on behalf of both parties and came to the conclusion that the respondent has got right in the portion of Plot No.5 and she is a joint owner and mandatory injunction cannot be granted and allowed the execution application and dismissed the execution petition. Hence, there is no merit in the revision and the same is liable to be dismissed.

7.Heard Mr.M.R.Sreenivasan, learned counsel appearing for the petitioner and Mr.S.Venkatesh, learned counsel appearing for the respondent and perused the materials available placed before this Court.

8.Admittedly, the petitioners filed a suit in O.S.No.434 of 2009 before the I Additional District Munsif, Kuzhithurai, for permanent injunction and the said suit was decreed on 16.08.2010 and subsequently, they filed a suit in O.S.No.176 of 2012 for mandatory injunction for removal of shed alleged to have constructed by the respondent unlawfully and got a decree on 07.04.2014. Subsequently, the petitioners herein filed execution petition in E.P.No.83 of 2014 in O.S.No.76 of 2012 to execute the decree passed in O.S.No.176 of 2012. During the pendency of the said execution petition, the respondent herein filed a execution application in E.A.No.80 of 2015 under Section 47 of Cr.P.C and the said application was allowed and consequently, the execution petition was dismissed by the Executing Court.

9.The main contention raised by the respondent that originally the petitioners and the father of the respondent are co-owners. The property allotted to their family under partition deed and the father of the respondent got 1/4th share in the said property, in that way, the respondent's father was a co-owner and subsequently, the father of the respondent executed a settlement deed in favour of the respondent, on 17.03.2009 with respect of 1/4th share in the suit property. Therefore, the respondent became joint owner of the suit property in O.S.No.2294A. Therefore, mandatory injunction obtained against the co-owner is not maintainable. Before the trial Court, the respondent herself was examined as P.W.1 and she marked the certified copy of the partition deed dated 25.08.1951 and the same was marked as Ex.P.1. The translated version of the partition deed was marked as Ex.P.2. The land tax receipt, dated 28.03.2009 was marked as Ex.P.3. The proceedings of the Tashildar was marked as Ex.P.4. The settlement deed dated 17.03.2009 executed by one Thankappan, in favour of the respondent was marked as Ex.P.5.

10.On the side of the petitioners, the second petitioner was examined as R.W.1 and the said partition deed and translated copy of the respondent's father were marked as Ex.R.1 and Ex.R.2. The sale deed



executed by one Thankayyan Nadar in favour of Ramayyan Nadar was marked as Ex.P.3. The Sale deed executed by one Chellappan Nadar in favour of Ramayyan Nadar was marked as Ex.P.4 and the land tax receipt, dated 29.10.2015 was marked as Ex.R.5. After examining both the evidence of P.W.1 and R.W.1, and the documents Ex.P.1 and Ex.P.5, which clearly shows that the father of the respondent was having share in the suit property and subsequently, he executed a settlement deed in favour of her daughter, on 17.03.2009. Therefore, as per Ex.P.1, the father of the respondent has got 1/4th share in the said property and subsequently, executed a settlement deed in favour of the respondent herein. Therefore, the respondent has got share in the said property and she has also became joint owner of the suit property in S.No.22994A. Therefore, the Executing Court has rightly come to the conclusion that the petitioners does not have any right to get mandatory injunction against the joint owner in the joint property in the old S.No.2294A corresponding to the Re-survey No.496/11. Since the respondent established that she is also a joint owner in the suit property, the Executing Court came to the conclusion that the EP cannot be maintained against the co-owner for mandatory injunction. Therefore, allowed the Execution Application and dismissed the Execution Petition.

11.Section 47 of CPC clearly says that as a separate suit for determination of the question relating to the execution, discharge or satisfaction of the decree by a separate suit has been barred and that can be decided in the execution petition itself. Therefore, the Executing Court has rightly invoked Section 47 CPC and entertained the application filed by the respondent and decided the dispute between the parties. Therefore, there is no merit in these revisions and the same are liable to be dismissed. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal District Munsif,
Kuzhithurai, Kanyakumari District.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.SIVAJI, Advocate (SR-4497[F] dated 07/02/2022)

+1 CC to M/s.R.NANDA KUMAR, Advocate (SR-4633[F] dated 07/02/2022)

**Order made in
C.R.P (MD) Nos.272 and 273 of 2017
and
C.M.P (MD) No.1278 of 2017
04.02.2022**

MK/17.02.2022/4P/6C

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