



C.M.S.A.No.66 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :03.03.2023

Judgment Pronounced on :09.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.S.A.No.66 of 2021
and
C.M.P.No.13321 of 2021

N.Annamalai

... Appellant

vs.

1.P.Thangamani (Died)

2.Indrakumar

3.I.Deenadayalan

4.I.Dineshkumar

5.I.Yuvarani

[Respondents 2 to 5 brought on record as L.Rs
of the deceased sole respondent Viz.,Thangamani Ammal vide
Court order dated 02.09.2022 made in C.M.P.No.6428 of 2022
in CMSA.No.66 of 2021 and C.M.P.No.13321 of 2021 by PTAJ]

... Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under Order XLIII Rule 1 read with Section 100 C.P.C, against the judgment and decree passed in C.M.A.No.7 of 2017 on 18.03.2020 by the learned II Additional Judge, City Civil Court, Chennai confirming the fair and final order passed in E.A.No.4219 of 2016 in E.P.No.3695 of 2013 in O.S.No.5967 of 1985 on the file of the IX Assistant Judge, City Civil Court, Chennai dated 10.11.2016.



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For Appellant : Mr.N.S.Racheal Catherine

For Respondents :Mr.M.Balasubramanian for Caveator

J U D G M E N T

The Judgment Debtor is the appellant herein.

2. The brief facts leading to filing of the above C.M.S.A are as under:-

(a) The respondent/plaintiff filed a suit in O.S.No.5967 of 1985 before the City Civil Court, Chennai for the Specific Performance of the suit sale agreement in respect of 1/5th share of the property at No.19, Sivaraman Street, Triplicane, Chennai. 600-005.

(b) Aggrieved against the said judgment and decree, the defendant has preferred appeal in A.S.No.925 of 1993 before the High Court and the same has been dismissed on 03.04.2012.

(c) The decree-holder filed E.P.No.3695 of 2013 and the same was allowed by the trial Court on 18.11.2014 and was directed to produce the draft sale deed .Against the said order, it appears that the judgment



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debtor filed E.A.No.323 of 2015 to review the said order. The review application as against the Executive proceedings order was also dismissed by the E.P court on 20.08.2015. Thereafter, draft sale deed was produced by the plaintiff decree-holder.

(d) The plaintiff decree holder/respondent gave 4 boundaries in the schedule which was not clearly spelt out in the plaint schedule and hence he has filed the present application for rejection of the draft sale deed in E.A.No.4219 of 2016 to record objection and the same was dismissed on 10.11.2016.

(e) Aggrieved against the said order, the judgment debtor filed C.M.A.No.7 of 2017 before the learned II Additional City Civil Court, Chennai and by an order dated 18.03.2020 the same was dismissed and hence this C.M.S.A.

3. The learned counsel for the appellant/judgment debtor could contend that the issue raised goes to the root of the matter and further submitted that it is not mis-description but a non-description of the schedule of the property and drew my attention to schedule of the property in the plaint, decree and in Execution Proceedings.



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4. The learned counsel for the respondent/ decree-holder could

contend that as per the law laid down by the Hon'ble Supreme Court in

Sheodhyan Singh And Others vs Musammat Santchara Kuer reported in AIR

1963 SC 1879 it is only a mis description and the same need not be does

not effect the decree and also relied upon *2022 (5) CTC 942 [Sarath*

Kakumanu Vs.Veerappan Arunachalam and 2.Priya Asokan]

"17. When the Suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order 7, Rule 3 and Order 20, Rule 3 of the C.P.C is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resor can be had to Section 152 or Section 47 of the C.P.C depending on the facts and circumstances of each case which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the C.P.C by the Court which passed the decree by supplying the omission. Alternatively, the exact description of Decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47, C.P.C. A decree of a Competent Court should not, as far as practicable, be allowed to be defeated on account of an



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accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the C.P.C.

With regard to rectification of the Survey Number mentioned in the decree, this Court has held that:-

"Description of property in plaint must be sufficient to identify it. If property identifiable with boundaries and Survey Numbers, plaint has to specify the same. Even in absence of Survey Numbers, if property can be identified with Boundaries, execution can be ordered."

5. It remains to be stated that the Hon'ble Supreme Court in **Parthiba Singh and another v Shanti Devi reported in 2002 5 CTC 660**, has laid down the law that, a successful plaintiff should not be denied of fruits of the decree on the ground of certain defects in the description of the property.

6. After going through the pleadings and the evidence, I find that the property as a whole, belongs to 5 brothers. The Will executed by predecessor in title was probated and with regard to the shares of the 4 out of 5 brothers, their share was purchased from them. All 4 brothers



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have sold their respective shares to an extent of 4/5th to the defendant decree-holder and only one brother who has entered into an agreement of sale refused to execute the sale deed and has been squatting in the property for a long number of years and hence resulted in filing of suit in O.S.No.8967 of 2018 as stated supra.

7. In appeal, the trial Court decree was confirmed and the execution proceedings was passed as stated supra.

8. Hence, both the courts below has rightly comes to the conclusion that the description of boundary does not affect the decree, since the decree holder has already purchased the property to an extent of 4/5th share. What would remain is only 1/5th share i.e. subject matter of the decree. Besides the preposition of law is clearly as crystal as enumerated in the above mentioned decisions.

9. Hence, the finding of the trial Court that it is only a mis description and the same will not affect the decree, does not warrant any interference. A mere mis description of property in the decree will not make the decree become inexecutable.



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10. Besides in this instance, the decree holder is admittedly the owner of the 4/5th share of the property and therefore, I find no merits in this case.

11. Accordingly, this Civil Miscellaneous Second Appeal is dismissed with costs of Rs.5000/- payable to the respondents counsel, High Court within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected C.M.P is closed.

09.03.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes/ No

To

- 1.The II Additional Judge, City Civil Court, Chennai
2. The IX Assistant Judge, City Civil Court, Chennai
3. The Section Officer,
V.R.Section, High Court of Madras, Chennai.

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RMT.TEEKAA RAMAN, J.,

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