



CRP No.696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.696 of 2023

1.Nandakumar
2.Suresh Babu
3.Rajina Devi
4.Jayalakshmi

... Petitioners/JD/Defendants

Versus

1.Lalith Kumar Zoota
2.C.Madanlal
3.C.Deepak Kumar
4.Manju Devi

...Respondents/DH/Plaintiffs

Civil Revision Petition filed Under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in E.A.No.2 of 2022 in E.P.No.151 of 2021 on the file of the XXVIII Assistant City Civil Court, Chennai, dated 22.12.2022, executing the decree passed in O.S.No.2425 of 2019 on the file of VI Additional City Civil Court, Chennai.

For Petitioners : Mr. K. Pattabhi

For Respondents : Mr.Raghavachari, Senior Counsel
for Mr.Avinashwadhvani

ORDER

The petitioners have filed this revision petition to set aside the order passed in E.A.No.2 of 2022 in E.P.No.151 of 2021 on the file of the XXVIII

Assistant City Civil Court, Chennai, dated 22.12.2022, executing the decree



CRP No.696 of 2023

passed in O.S.No.2425 of 2019 on the file of VI Additional City Civil Court,
Chennai.

2. Heard, Mr. K. Pattabhi, learned counsel for the petitioners and Mr. Raghavachari, learned Senior Counsel for Mr. Avinashwadhvani appearing for the respondents and perused the materials available on record.

3. The revision petitioners herein are the Judgment debtors in E.P.No.151 of 2021 and defendants in O.S.No.2425 of 2019 filed by the respondents herein. The said suit was filed by the plaintiffs, directing the defendants to quit and hand over the vacant possession of the property situated at 11, Door No.10, Reliance Rice Mill Street, Kondithope, Chennai, to the plaintiffs and also for the damages of a sum of Rs.10,00,000/- with right over the vacant possession of the property situated at 11, Old No.10, Reliance Rice Mill Street, Kondithope, Chennai-600 079, based on the purchase made by them through sale deed dated 10.01.2007 from one Balasubramanian. In fact the suit property was originally belongs to one Jagannayakulu Naidu, who was the forefather of the defendants' family. He bequeathed the said property to the adopted daughter Kasthuribai. By availing loan from M/s.Park Town Benefit Fund Ltd., they created a mortgage



CRP No.696 of 2023

over a suit property in the year 1994. As she failed to repay the loan the said property was auctioned, in which P.N.A.Manisundar was declared as the highest bidder and the sale deed was executed in the name of his nominee Balasubramaniam. Based on the said purchase, the plaintiffs claim themselves as absolute owner of the property and they attempted to take possession of the property. But the defendants caused hurdle by filing various litigations. The defendants filed C.S.No.887 of 2006 on the file of this Court, to declare the sale deed dated 05.04.2004 as null and void, against the said auction proceedings, but the said suit was dismissed as default in the year 2009, against which the application for restoratio was filed and the same was allowed. Subsequently, the suit was dismissed for default on 15.03.2017. Thereafter, the plaintiffs issued notice calling upon the defendants to vacate the premises, for which they refused. Hence, the plaintiffs have filed the suit in O.S.No.2424 of 2019.

4. On perusal of the plaint it is seen that, the defendants after receipt of the notice remained ex-parte. Thereafter paper publication was effected and ex-parte decree was passed on 23.01.2020. To execute the said decree, the plaintiffs have filed E.P.No.151 of 2021. In that petition the defendants / Judgment Debtors entered appearance through their respective



CRP No.696 of 2023

counsel. The Judgment Debtor No.5 filed counter, which was adopted by other Judgment Debtors. When the case was posted for enquiry the Judgment Debtors filed application under Section 47 of CPC.

5. In the application filed under Section 47 of CPC application, in E.A.No.2 of 2022 in E.P.No.151 of 2021, the defendants raised objection with regard to the execution of the decree. The foremost is that EP is not maintainable because the Decree holder claim is not maintainable and it is as such barred by limitation, because they have not taken any steps to get the possession of the property within one year from the date of auction nor they approached the Court within 12 years from the said sale deed and they are out of possession, i.e. more than 30 years. Further, they also claim that they are in un-interrupted possession and claim title over adverse possession. Thirdly under Section 54 and 55(1)(f) of the Transfer of Property Act, it is the duty of the vendor to give possession to the plaintiffs. According to Judgment Debtors all these issues relate to the execution of the decree, so the same has to be decided under Section 47 of CPC.

6. The Decree holder / plaintiffs raised objection to number the application stating that in the original suit, they remained ex-parte. Another



suit which was filed in the year 2006 was also dismissed for default, and because of the said earlier proceedings, for all these years, the plaintiffs were not able to take steps to get possession of the property. The issues raised by the defendants are to be decided in the main suit and not in the execution application. Hence, they raised objection for numbering the application under Section 47 of CPC.

7. Considering both sides submissions, the learned trial Judge held that the Judgment Debtors / defendants have not taken steps to set aside the ex-parte decree in O.S.No.2524 of 2019. Even after their appearance before the execution petition, they have filed application under Section 47 of CPC. The scope of the said petition is narrow and miniscule. The objections raised by the Judgment Debtors with regard to adverse possession also not sustainable for the reason that already they allowed the suit, to be decreed ex-parte and C.S.No.887 of 2006 was also dismissed for default which was filed by them to declare the plaintiffs vendors sale deed as null and void. From the year 2009 to 2017 the plaintiffs were not able to take possession of the property. So, prima facie, the minimum requirements for claiming adverse possession is not satisfied because they are claiming themselves as original owner in the earlier suit in C.S.No.887 of 2006. Thereafter, in the present suit they are



CRP No.696 of 2023

claiming adverse possession without declaring as to who is the real owner.

The basic requirements with regard to the objection raised under Section 47 of CPC has not been established. Hence, the execution Court dismissed the petition, holding that the ex-parte decree relied on by the plaintiffs are sufficient to execute the sale deed. Accordingly, delivery was ordered and the application under Section 47 of CPC in E.A.No.2 of 2022 was dismissed.

8. The learned counsel for the revision petitioners / Judgment Debtors / defendants contended that executing Court failed to take note of the fact that within one year from the date of the auction, duty of the vendor is to give the property to the vendee / decree holder. But admittedly no such possession was handed over within one year by the auction purchaser nor the decree holder filed a petition to take possession of the property within 12 years from the date of purchase, thereby they disputed the plaintiffs claim, by relying the ratio laid down in “**1973 SSC Online All 336: AIR 1974 AH 144 in the case of Sahu Deoki Nandan Vs.Narendra Kumar and Another** in Ex. First Appeal No.299 of 1969 decided on 31.08.1973, the relevant portion of Paragraph No.7 is extracted here under:

The other argument of the learned counsel for the appellant was that the sale was confirmed on 7-11-1955 and, as provided under [Article 134](#) of the [Limitation Act](#), 1963, the auction purchaser had to make an application



WEB COPY



CRP No.696 of 2023

for delivery of possession within one year from the date of the confirmation of the sale and because no such application was made by the auction purchaser, therefore, his right as auction purchaser was extinguished and Sahu Deoki Nandan became the owner of the property by adverse possession. [Article 134](#) of the [Limitation Act](#), 1963, reads as below:

134. For delivery of possession by a purchaser of immovable property at a sale in execution of a decree* One year When the sale becomes absolute.”

9. But as rightly pointed out by the plaintiffs counsel, the property was auctioned in the year 2004 wherein the plaintiffs have purchased the property through sale deed in the year 2007. But before that C.S.No.887 of 2006 was filed by the defendants against M/s.Park Town Benefit Fund Ltd., and also against the purchaser Balasubramaniam, by disputing the validity of the auction sale and the summons were served in the year 2009. Thereafter, the present plaintiffs were impleaded as parties. When some of the tenants were vacated and the plaintiffs went to the property to collect the rent, the defendants raised objection and also scolded them, hence, they filed a suit. In the mean while, the suit filed by the defendants were dismissed for default on 06.09.2009. Thereafter, the restoration application was filed and one of the parties to the suit died. In the year 2017, due to the pendency of the suit, the



CRP No.696 of 2023

plaintiffs / purchaser of the property, was not able to take possession of the property, therefore the objection raised by the revision petitioners / defendants are not sustainable. Because of the above such legal proceedings, the plaintiffs were not able to take possession of the property even after dismissal of the suit in the year 2017. Immediately they filed the present suit. To that effect the ratio laid down in “ **MANU/TN/0806/1996, SA.NO.844 of 1983**, *“Plea of adverse possession cannot be taken against party which is kept out of possession by process of law or has no right of entry in order of Court.”* relied by the petitioner supporting his contention. Therefore, the objection raised by the defendants that plaintiffs have not taken possession of the property within one year from the date of purchase as such is not valid under law. Therefore the authority relied by the revision petitioners / defendants would not apply to the present facts of the said case.

10. Further, the defendants also claimed right over the property based upon the adverse possession, contending that the plaintiffs have not taken possession of the property, so they set up title, by way of adverse possession, for that relied the dictum follow in **(2004) 10 Supreme Court Cases 65 in the case of Amrendra Pratap Singh Vs.Tej Bahadur Prajapati and Others** in Civil Revision No.11483 of 1996 decided on 21.11.2003, the relevant portion of



Paragraph No.22 is extracted here under:

WEB COPY

22. What is adverse possession? Every possession is not, in law, adverse possession. Under [Article 65](#) of the [Limitation Act](#), 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of [Section 27](#) of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is



CRP No.696 of 2023

treated by the Doctrine of Adverse Possession as evidence of the loss of desire

WEB COPY *on the part of the rightful owner to assert his ownership and reclaim possession”.*

11. As discussed above, in the year 2006 itself, they have filed a suit to declare the sale as null and void and declare themselves as owner of the property. But, they failed to prove the case and the said suit was alleged to be dismissed for default during 2006-17. There was a legal proceedings pending before this Court and even assuming that the possession was not disturbed but the possession was not uninterpreted possession. In the earlier suit, the auction purchaser claimed right over the property, and disputed the defendants claim. Furthermore, the property was auctioned due to the failure to repayment of the loan which was known to all the defendants. Therefore, the right over the property was already extinguished. Thus, the present plaintiffs are the absolute owners of the property but in the earlier suit, the defendants have not accepted the title of the plaintiffs, and they were claiming themselves as a absolute owner. In such circumstances, the claim for adverse possession cannot be sustained. The said referred authority also not support the defence. Though, they took adverse possession as a plea, there must be a person having valid title against whom plea of adverse possession can be raised. But in the case on hand, the defendants themselves claimed as the



CRP No.696 of 2023

owners besides all these years plaintiff took efforts to take possession of property though Court of law. Hence the possession is interrupted one and the same was rightly appreciated by the Executing Court which needs no interference by this Court.

12. After issuance of notice in the suit, though the defendants appeared, they remained ex-parte, thereafter, the execution petition was, filed by the plaintiffs. Instead of setting aside the ex-parte decree, they have filed the application under Section 47 of CPC, disputing the execution of the decree by raising all the defense which ought to be raised in the main suit as rightly observed by the executing Court, to that effect, following authority relied by the plaintiffs is supporting the contention. The scope of Section 47 of CPC is limited one and with regard to the execution of the decree it can be decided but the objection raised by the defendants clearly shows that they are disputing the title of the plaintiffs and also claim right over the property which is beyond the scope of the Section 47 of CPC as rightly pointed out by the executing Court. Therefore, the finding made by the Executing Court in E.A.No.2 of 2022 is sustainable.

13. The learned counsel for the respondents relied on the Judgment



CRP No.696 of 2023

of this Court reported in i). S.A.No.844 of 1983 dated 05.07.1996, Veeramuthu V.Puttalayee, ii). Rahul S. Shah V.Jinendra Kumar Gandhi & Others, (2021) 6 SCC 418, iii) Parvathi V.Sundaram, (2017) 4 CTC 184, iv). Srirangam Club V. Srirangam Municipal Council, (2015) 2 LW 273 & v). Barkat Ali & Another V. Badrinarain, (2008) 4SCC 615.

14. The ratio laid down in AIR 2017 SCC 152, in relation to scope of Section 47 of CPC,

“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e, discharge or satisfaction of the decree and is aligned with the consequential provisions or Order 21CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the Court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge of satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing Court must not go beyond the decree.



CRP No.696 of 2023

WEB COPY

However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the Courts despite there being a decree in their favour, Experience has shown that various objections are filed before the executing Court and the decree holder is deprived of the fruits of the litigation and the judgment -debtor, is abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.”

15. The ratio relied by the respondent herein is squarely applicable to the facts of the case, so the objection raised by the revision petitioners cannot be entertained. Already delay was caused, hence time for handing over the premises is three months.

16. Accordingly, this Civil Revision Petition is dismissed. The order passed by the Executing Court in E.A.No.2 of 2022 in E.P.No.151 of 2021 dated 22.12.2022, is confirmed and the petitioners are directed to surrender the possession of the Suit property to the plaintiffs within the period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

18.10.2023



CRP No.696 of 2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
rri

To

- 1.The XXVIII Assistant City Civil Judge, Chennai.
2. The VI Additional City Civil Judge, Chennai.
- 3.The Section Officer,
VR-Section, High Court of Madras.



WEB COPY



CRP No.696 of 2023

T.V.THAMILSELVI, J.

rri

Civil Revision Petition No.696 of 2023

18.10.2023