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CRP.No. 3169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRP.No. 3169 of 2023
and
CMP No. 19583 of 2023

Bakthavatchalam

... Petitioner

Versus

Ramalingam

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the docket order dated 12.10.2022 passed in Unnumbered EA of 2022 in E.P.No. 2 of 2019 in O.S.No. 340 of 1994 (Cuddalore PDM Court E.P.No. 378 of 2000) in O.S.No. 340 of 1994 on the file of the District Munsif Cum Judicial Magistrate, Kurinjipadi.

For Petitioner : Mr.P.Mani



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ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order dated 12.10.2022 passed in Unnumbered EA of 2022 in E.P.No. 2 of 2019 in O.S.No. 340 of 1994 (Cuddalore PDM Court E.P.No. 378 of 2000 in O.S.No. 340 of 1994 on the file of the District Munsif Cum Judicial Magistrate, Kurinjipadi.

2. The case of the petitioner is that the respondent/plaintiff has filed a suit in O.S.No. 340 of 1994 before the District Munsif, Cuddalore, for declaration and permanent injunction against the defendant. The petitioner/defendant has contested the suit by filing written statement denying all the averments made in the plaint. The suit property originally belonged to one Rajagopal Padayachi by way of registered sale deed, dated 02.12.1938. After his demise, the property was enjoyed by his sons and one Radhamba Ammal, who is a close relation of Rajagopal Padayatchi. On 05.10.1993, in pursuance of the agreement of sale, the respondent/plaintiff purchased the suit property under the registered sale



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deed dated 23.03.1994 for a valid consideration of Rs.28,250/- from the sons of Rajagopal Padayachi. The respondent/plaintiff took possession of the schedule mentioned property and the property by putting up fence and he has been in possession and enjoyment of the property since then. The respondent/plaintiff also owns a house property on the immediate west of the suit property wherein he has allowed his sister Kuppammal to reside. The respondent/plaintiff is living 4 houses away from the suit property. The respondent/plaintiff has been making arrangements to use the suit property as a garden from 01.04.1994, the respondent/plaintiff has nothing to do with the suit property and he has no iota of title of interest in the suit property. Since the property is a Grama natham property, the suit was filed by the respondent/plaintiff.

3. The description of the property given in the plaint is not correct, in order to suit his own convenience, the respondent/plaintiff has given boundaries and the petitioner/defendant specifically denies the truth validity of the agreement dated 10.09.1993 and the title of the proposed vendors to the said agreement, the vendors themselves did not have any title on the date of agreement especially Radhambammal. Consequently,



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the sale deed dated 24.03.1994 in favour of the respondent/plaintiff will not convey any title. In pursuant to the sale deed, the respondent/plaintiff did not take any possession and consequently did not fence any portion. The plaintiff's sister is residing only to the west of the part of the defendant. On 02.12.1938, the above said Veliya Padayachi and his son Jayaraman sold the property to Rajagopal Padayachi two items of the properties, the properties do not relate to the property of the petitioner/defendant. On 15.04.1991, Radhambammal said to have sold in favour of the respondent/plaintiff measuring an extent of 43 feet x 38 feet, even the description in the sale deed is also wrong, the sale deed dated 12.04.1994 in favour of the plaintiff does not contain correct description. The respondent/plaintiff has clearly created two documents as if he has title to the two sets of properties, in fact, he has no title to either of them.

4. However, the property purchased by the defendant, belonged to one Vadivel Padayachi and he had two sons and they were residing there. After his demise, his son continued to reside thus by acquiring the possession for more than 60 years and now, his sons have possession title. The superstructure in course of time become dilapidated. So, they sold the



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said property as a site in favour of the respondent/plaintiff on 21.03.1994.

In pursuance of the sale deed, the petitioner/defendant took possession put up of fence in the north, south and west is residing in a hut put up by him. The respondent/plaintiff having purchased after the petitioner/defendant attempted to obtain injunction and it was not granted.

5. Initially the respondent filed a suit in O.S.No.340 of 1994 for declaration and recovery of possession and the said suit was dismissed by Judgment and decree dated 05.03.1999. Aggrieved by the same, the respondent preferred an appeal suit in A.S.No. 78 of 1999 and the same was allowed on 31.08.2000 and it became final since the petitioner did not file any second appeal. On the strength of the decree, the respondent filed Execution Petition in E.P.No. 378 of 2000 on 01.12.2000. On perusal of the order passed by the Court below, it reveals as follows:-

This EP is of the year 2000. After a very long struggle counter was able to be filed only 18.07.2011. After hearing the petitioner when the matter was ripe for respondent side enquiry, a stay petition was filed. After giving sufficient opportunity since the respondent was not ready, the Court posted the matter for pronouncing order on 02.12.2011. By that time, two applications under EA.No. 406 of 2011 and E.A.No. 407 of 2011 were



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filed and those were dismissed. Again the matter was posted for pronouncing orders on 30.10.2012. On that day, a petition to reopen was filed. That application under EA.No. 363 of 2012 was dismissed. Once again the matter was posted for order and this time a petition to stay all further proceedings. It was rejected on 05.04.2013 and on that day itself delivery was ordered.

b) All of a sudden under Order 21 Rule 97 was filed and that application under EA 341/2013 was dismissed on 04.08.2015. Once again delivery was ordered. Thereafter, a stay petition and a petition to recall the warrant were filed and those petitions were partly allowed to grant one month time. Meanwhile, since the respondent did not proceed to take any step, the petition itself was dismissed for default. As per order in EA.No. 252 of 2016 the main execution petition was restored and this time a petition under Section 47 was filed in EA.No. 535 of 2016. That petition was dismissed for default on 03.01.2017 and to restore the above said Section 47 application, this petition has been filed.

6. Further revealed that after dismissal of the EA.No. 341 of 2013 filed under Order 21 Rule 97 of CPC., dated 04.08.2015, the petitioner filed petition under Section 47 of CPC on the ground that the decree itself inexecutable one since the first appellate court has no jurisdiction to decree the suit. It is pertinent to note here that those grounds were not raised before the First Appellate Court. Even after decreeing the suit in



the appeal suit, the petitioner failed to prefer any second appeal as against the judgment and decree passed in AS.No. 78 of 1999 dated 31.08.2000.

Having failed before the First Appellate Court, the petitioner ought to have filed an appeal before this Court. Without doing so, after 15 years from the date of execution petition, the petitioner filed a petition under Section 47 of CPC., that too on the ground that the First Appellate Court had no jurisdiction to pass judgment and it is inexecutable decree. In this regard, the learned counsel for the respondent has relied upon the judgment in the case of **Shantilal Kothari Vs. Sathrasala Venkatram (since deceased) Shatrasala Sharathbabu reported in 2020-1-LW.561**, wherein this Court held as follows:-

“21.The dictum laid down in the above judgments would clearly show that the Executing Court cannot sit as an appellate authority to declare the judgment passed by the Court as nullity and inexecutable and the Executing Court has to execute the decree as it is.

22. From the facts of the case on hand, it is clear that the grounds raised by the appellant, have already attained finality and action under the guise of claim under Section 47 CPC, cannot be raised by filing an application under Section 47 CPC. The decision rendered in the earlier proceedings, is binding between the parties. Therefore, we



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are of the opinion that there is absolutely no infirmity in the impugned order passed by the learned Single Judge warranting this Court to make interference in these O.S.As. Accordingly, the O.S.As are dismissed. In view of the dismissal of the O.S.As., as discussed above, we are not traversing into the other submissions made by the learned counsel for the appellant.

7. The above said Judgment squarely applies to the case on hand.

When it is clear that the grounds raised by the petitioner have already attained finality, under the guise of claim, an application under Section 47 CPC cannot be filed. That apart, in the case on hand, as stated supra, the petitioner dragged the execution petition for 20 years by filing the petition after petition including the present Civil Revision Petition and as such, the petitioner only to drag the execution petition, willfully and wantonly allowed the Court below to dismiss his petition for default. Therefore, the Court below rightly dismissed the petition and as such, this Court finds no irregularity or infirmity in the order passed by the Court below. Further, in the CRP NO.2280 of 2017, which was filed earlier, this Court, by an order dated 26.03.2021 directed the Executing Court to dispose of the execution petition within a period of eight weeks from the date of receipt of a copy of



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that order.

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8. While that being the case, the contention of the petitioner that the docket order passed by the Court below is illegal and irregular and amounts to failure to exercise the jurisdiction vested in it, has no legs to stand. By way of an impugned docket order dated 12.10.2022, the court below has averred that since the grounds raised by the petitioner have already attained finality and as per direction of the Hon'ble Division Bench of this Court, the docket order was passed by returning the petition, which cannot be found fault with. For ready reference, the impugned order is extracted hereunder:-

“Heard, Document perused. This court is directed by the order of the Hon'ble High Court in CRP NPD No.2280 of 2017 & C.M.P.No.10745 of 2017 as follows:-

“It is clear that the grounds raised by the appellant have already attained finality and action under the guise of the claim under Section 47 C.P.C., cannot be raised by filing an application under Section 47 C.P.C.”

“The Honourable D.B.of this Court held that the execute in court cannot sit as an appellate authority to declare the judgment passed by the court as nullity and inexecutable one”



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and further the Honourable High Court has also given a direction to dispose of the E.P. Within the stipulated period.

Hence, as per the directions of this Court, this petition is returned.”

9. On perusal of the above said impugned order it is seen that when the grounds raised by the petitioner have already attained finality and under the guise of the claim, petition under Section 47 C.P.C., cannot be raised, the court below rightly returned the petition filed by the petitioner, therefore, there is no illegality or perversity in the impugned order passed by the Court below.

In view of the above, this Court finds no reason to interfere with the impugned docket order passed by the Court below and the Civil Revision Petition is dismissed. Consequently, connected CMP No. 19583 of 2023 is also closed.

31.08.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
MSM

To



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1. The District Munsif Cum Judicial Magistrate, Kurinjipadi.

2. The Section Officer, V.R. Section,
High Court, Madras.

V.BHAVANI SUBBAROYAN, J.

MSM / ssd

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