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CRP (MD) No.732 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.07.2023
Pronounced on	06.12.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.732 of 2023

and

CMP (MD).Nos.6985, 3424 of 2023

1.Karudiayan
2.A.S.Mariappan
3.S.V.Mariappan

... Petitioners/defendants 1 , 3 and 4

Vs.

S.Muthaiah

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order passed in E.P.No.31 of 2021 in O.S.No.531 of 2009 dated 25.01.2023 on the file of the Principal District Munsif, Tirunelveli.

For Petitioners : Mr.S.Kumar

For Respondent : Mr.S.Selva Aditya



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ORDER

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The revision petition is preferred against the order passed in E.P.No.31 of 2021 in O.S.No.531 of 2009 dated 25.01.2023 on the file of the Principal District Munsif, Tirunelveli.

2. According to the revision petitioners, the respondent as plaintiff filed O.S.No.531 of 2009 for the following reliefs:

"1) that the sale deed dated 4.1.2002 bearing document No. 29/2002 registered at the office of Joint Sub- Registrar, Tirunelveli is declared as null and void,

2) that the sale deed dated 14.7.2009 bearing document No. 385206/2009 registered at the office of Joint Sub- Registrar, Tirunelveli is declared as null and void,

3) that the defendants are restrained from encumbering or alienating the schedule property,

4) that the defendants are directed to return the original sale deed dated 26.4.1980 bearing document No.892/1980 at the office of Joint Sub-Registrar, Tirunelveli to the plaintiff,



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5) that the defendants are directed to handover the possession of the schedule property to the plaintiff on or before 20.3.2015."

3.The said suit was decreed in favour of the plaintiffs and for executing the decree passed in O.S.No.531 of 2009, the plaintiff has filed E.P.No.31 of 2021 in which delivery was ordered on 25.01.2023. Aggrieved by this, the present revision petition is preferred.

4.The learned counsel appearing for the revision petitioner would submit that the decree was passed against the 2nd defendant in E.P.No.1 of 2021 who thereafter died, and therefore, his legal heirs are necessary and proper parties in the execution proceedings and without impleading the legal heirs of the 2nd defendant, the respondent/plaintiff cannot be allowed to proceed with the execution petition against the other respondents. The learned Counsel would submit that the respondents/plaintiffs filed the above suit for declaration, recovery of possession against the present civil revision petitioners and deceased 2nd defendant in the suit stating that the present revision petitioners and 2nd defendant in the suit encroached the suit property and sought for relief of recovery of possession. The trial Court, after



considering the materials placed on both sides, came to the conclusion that the possession of the suit property is with the defendants an ordered for recovery of possession. But in the execution application, the respondents/plaintiffs has stated that the possession of suit property is not with the 2nd defendant and therefore, his legal heirs need not be impleaded in the execution proceedings which is incorrect. It is further submitted that in the suit the respondents/plaintiffs sought for the relief of recovery of possession, from the 2nd defendant and since the 2nd defendant died during pendency of the execution application, the stand taken by the respondents/plaintiffs that the 2nd defendant was not in the possession of the suit property and therefore, his legal heirs need not be impleaded in the execution petition is unsustainable. The decree passed by the trial Court was against the 2nd defendant also. Hence, the executing Court cannot travel beyond the decree. Therefore, the legal heirs of the 2nd defendant ought to have been impleaded by the respondents/plaintiffs. Without impleading the legal heirs of 2nd defendant the execution application itself is not maintainable. The executing Court ought to have given a chance to the revision petitioners to implead themselves as necessary party and allow them to give evidence on their side. However, the executing Court without



considering above facts erroneously dismissed the application filed by the revision petitioner in E.A.No.5 of 2022 seeking permission to implead themselves and to let in oral evidence which is against the principles of natural justice. He would further submit that in the event of death of decree holder or judgment data during the pendency of execution petition no limitation period is prescribed for bringing on record the legal heirs of the deceased. To support his contention he has relied upon the decision case reported in *(1998) 3 SCC 148*.

5. On the other hand, the learned counsel appearing for the respondent would submit that it is not in dispute that the suit in O.S.No.531 of 2009 a decree was passed in favour of the respondent/plaintiff. Challenging the same, the revision petitioner along with 2nd respondent/ 2nd defendant preferred an appeal in A.S.No.531 of 2015 before the Additional Subordinate Court, Tirunelveli, and the same was dismissed on 21.22.2020. The second appeal preferred by the 2nd defendant was also dismissed on 07.09.2021. The Special Leave Petitioner has preferred by the petitioners in S.L.P(C).No.7103 of 2022 was also dismissed on 29.04.2022. Therefore, the decree passed in favour of the respondent/plaintiff has become final. The respondent/plaintiff



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filed the execution petition in E.P.No.81 of 2021 for executing the decree passed in his favour.

6.He would further submit that the above application was filed by the revision petitioners only to drag on the proceedings. The Executing Court has passed an order under Order 21 Rule 35 for delivery of the property. The 2nd defendant was only an attesting witness. Neither himself nor his legal heirs were in possession of the suit property and therefore, the legal heirs of the deceased 2nd defendant need not be impleaded in the execution petition. He would further submit that the execution petition for recovery of possession has to be filed only as against the persons who are in possession of the property. The said 2nd defendant was impleaded in the suit as a proper party and not as necessary party in the suit. Therefore, the revision petition filed by the petitioners is devoid of merits and liable to be dismissed.

7.Heard on both sides and records perused.

8.The contention of the revision petitioner is that even in the plaint averments it is stated that the 2nd defendant was in possession of the suit



scheduled property and the trial Court after considering materials placed on either side came to the conclusion that the possession of the schedule property is with the defendants and ordered for recovery of possession. After the demise of the 2nd defendant, his legal heirs i.e., the revision petitioners, as legal heirs of the 2nd defendant were in possession of the suit properties. However, the executing Court without impleading legal heirs of the 2nd defendant erroneously ordered for delivery of property. Aggrieved by the said order the present revision petition is filed.

9. On the other hand, the contention of the respondents is that the deceased 2nd defendant was only an attesting witness and neither himself nor his legal heirs were in possession of the schedule mentioned property and therefore, there is no necessity to implead the legal heirs of the 2nd defendant. The revision petitioners have not produced any documents to show that they are in possession of the suit property. Moreover, it is the specific case of the respondents that the 1st revision petitioner, along with the 2nd defendant in the suit forged the signature of the respondents and created a sale deed in favour of the 1st revision petitioner who intended to execute a power deed in favour of the 2nd petitioner. Nowhere it is stated that in the plaint that the 2nd



defendant was in possession of the suit property at the time of filing the suit.

The Original suit and the Appellate suit ended in favour of the respondents.

The S.L.P filed by the revision petitioners was also dismissed on 29.04.2022 as such the decree obtained by the respondents as become final and the respondents in order to enjoy the fruits of the decree, filed the above execution petition for recovery of possession. The executing Court has rightly ordered for delivery of possession. Since the petitioners failed to establish that they are in possession of the property, the Executing Court has rightly dismissed the petition filed by them to implead themselves as legal heirs of the deceased 2nd defendant. Therefore, no infirmity is found in the order passed by the trial Court the citations referred on the side of the petitioners is applicable only when the petitioners proved their possession in the suit property. Therefore, no reliance can be placed on the above cited cases. IT is needless to say that an execution petition for recovery of possession can be filed only against the persons who are in possession of the property and not as against all the defendants. Moreover, in the plaint averments it is only stated that the 2nd defendant was an attesting witness in the forged sale deed and nowhere it is stated that he is in possession of the suit property. Therefore, the order of the executing Court dated 25.01.2023 needs no



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interference and this revision is liable to be dismissed.

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10.In the result, the Civil Revision Case stands dismissed. No costs. Accordingly, the order passed by the learned Principal District Munsif, Tirunelveli, in E.P.No.31 of 2021 in O.S.No.531 of 2009 dated 25.01.2023 is confirmed. Consequently, connected miscellaneous petition is closed.

06.12.2023

vsn

To

The Principal District Munsif, Tirunelveli.



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