



CRP (MD) No.1363 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On	13.09.2023
Orders Pronounced On	13.12.2023

CORAM:

THE HON'BLE MRS JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD).No.1363 of 2022
and
C.M.P.(MD).No.5662 of 2022

Anbarasu

...petitioner

Versus

Amutha

...respondent

Prayer: This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, 1908 against the fair and decreetal order dated 09.02.2022 and E.A.No.04 of 2021 in E.P.No.21 of 2017 in O.S.No.26 of 2007 on the file of the Principal Subordinate Court, Tenkasi.

For petitioner : Mr.R.J.Karthick

For respondent : Mr.A.Hajamohideen



CRP (MD) No.1363 of 2022

ORDER

WEB COPY

This civil revision petition C.R.P.(MD).No.1363 of 2022 is preferred against the fair and decreetal order dated 09.02.2022 and E.A.No.04 of 2021 in E.P.No.21 of 2017 in O.S.No.26 of 2007 on the file of the Principal Subordinate Court, Tenkasi.

2. According to the civil revision petitioner, the respondent herein as plaintiff, filed the above suit in O.S.No.26 of 2007 for declaration of title and for recovery of possession in respect of the suit, 1st item of the property. The respondent is the sister of the plaintiff. In the above suit, the contention of the respondent/plaintiff is that the suit property was gifted to her by her father under a gift deed dated 26.11.1991. The said gift deed was accepted by her and from then onwards she is in possession and enjoyment of the 1st schedule property.

3. The civil revision petitioner would submit that the respondent has no exclusive right over the suit property. The revision petitioner is alone in possession and occupation of the property. Even during the life-time of his



father he was in possession of the property as an absolute owner. The respondent/plaintiff was never in possession of the property. His further submission is that the suit property is an undivided joint family property which was purchased out of joint family income.

4. The above suit in O.S.No.26 of 2007 was decreed against which the revision petitioner preferred an appeal in A.S.No.45 of 2017 before the Additional District Court, Tenkasi. The learned Judge by his judgment and decree dated 18.01.2009 confirmed the judgment and decree of the Trial Court. Challenging the same, the civil revision petitioner filed the second appeal in S.A.(MD)No.480 of 2019 before this court and the same was also dismissed on 26.11.2019.

5. The civil revision petitioner would further submit that in the earlier round of litigation, the respondent filed a suit for ejection against him in O.S.No.65 of 1996 on the file of the learned Principal District Munsif, Tenkasi on the ground that the civil revision petitioner had taken lease of the 2nd item of the suit property which is a commercial shop and the revision



CRP (MD) No.1363 of 2022

petitioner failed to pay the rents. The above suit was decreed by the Trial Court and the judgment and the decree of the Trial Court was confirmed by the Hon'ble Apex Court. While so the respondent/plaintiff filed E.P.No.21 of 2017 in O.S.No.26 of 2007 under Order 21 Rule 11 (2) of CPC for taking possession of the property. The civil revision petitioner made appearance and filed his counter. He also filed an application in E.A.No.3 of 2021 to stay the execution proceedings till the receipt of the order copy of E.A.No.684 of 2017 and E.A.No.2 of 2021 to re-open E.A.No.3 of 2021. While so on 03.09.2021 the execution proceeding was posted for filing counter. But, the counsel for the civil revision petitioner failed to appear. Hence the evidence on the side of the civil revision petitioner was closed and the same was posted for orders. Hence, the civil revision petitioner filed E.A.No.4 of 2021 in E.P.No.21 of 2017 to re-open the E.P.No.21 of 2017. The civil revision petitioner also filed E.A.No.5 of 2021 to file his objections and also E.A.No. 06 of 2021 to receive additional counter. However, the Trial Court by its order dated 09.02.2022 dismissed all the applications and ordered for delivery Batta in three (3) days in E.P.No.21 of 2017 and posted the E.P. on 05.07.2022. Challenging the said order, the present civil revision petition is



CRP (MD) No.1363 of 2022

filed.

WEB COPY

6. The learned counsel appearing for the civil revision petitioner would submit that the respondent/plaintiff did not mention the measurement of the property which he sought for delivery under Order 7 Rule 3 of Code of Civil Procedure. Hence, the execution petition is not maintainable and the judgment and decree is unexecutable. Further, the petition mentioned the property in the execution petition is different from the suit property. The Executing Court ought to have been given an opportunity to the revision petitioner to file his counter in this regard.

7. The learned counsel would further submit that since the revision petitioner is in lawful possession of the suit property for the decades together and whereas the respondent/plaintiff claims possession on basis of the fraudulent settlement deed, which is alleged to have been executed by his father, the Trial Court erroneously ordered for delivery which is unsustainable under law. He would further submit that the suit property is the joint family property and the father of the respondent has no right to execute



the settlement deed in favour of the respondent and moreover the father of the respondent/plaintiff was not mentally stable and moreover revision petitioner has contributed for the purchase of the property. The Executing Court lost sight of the above fact and erroneously ordered for delivery.

8. He would further submit that there is no material on record to show that the gift has been accepted by the respondent/plaintiff and pursuant to same, the possession has been handed over to her. Hence, the learned counsel prays for setting aside the fair and decreetal order passed by an order dated 09.02.2022 in E.A.No.4 of 2021 in E.P.No. 21 of 2017 in O.S.No.26 of 2007 on the file of the Principal Subordinate Court, Tenkasi.

9. On the other hand, the learned counsel appearing for the respondent/plaintiff would contend that the application filed by the revision petitioner in E.A.No.4 of 2021, is neither in accordance with law nor on facts, is acceptable. The intention of the revision petitioner is to prevent the respondent/plaintiff from enjoying the fruits of the decree. The above petition is filed only to drag on the proceedings. Hence the Trial Court has rightly



dismissed the said application which calls for no interference.

WEB COPY 10. Heard both sides and perused all the materials available on record.

11. It is not in dispute that in O.S.No.26 of 2007, a decree has been passed in favour of the respondent/plaintiff which was confirmed till the second appeal filed in S.A.No.480 of 2019. In order to execute the decree, the respondent/plaintiff filed E.P.No.21 of 2017 in which the Executing Court ordered for delivery Batta to be paid in three (3) days. Therefore, it is understood that the intention of the revision petitioner is only to drag on the proceedings to prevent the respondent/plaintiff from enjoying the fruit of the decree obtained by her. The Trial Court and the Appellate Court have neglected the defense put forth by the revision petitioner and passed the decree in favour of the respondent/plaintiff.

12. The Executing Court considering the above fact has rightly dismissed the application, filed by the petitioner/defendant and therefore, no infirmity or irregularity or perversity found in the order passed by the Executing Court in E.A.No.4 of 2021.



CRP (MD) No.1363 of 2022

WEB COPY 13. Accordingly, this civil revision petition is devoid of merits and accordingly the same is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

13.12.2023

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

nst

To:

The Principal Subordinate Judge, Tenkasi.



WEB COPY



CRP (MD) No.1363 of 2022

K.GOVINDARAJAN THILAKAVADI,J.

nst

Order in

C.R.P.(MD).No.1363 of 2022

and

C.M.P.(MD).No.5662 of 2022

Order Pronounced On

13.12.2023