



C.R.P(MD)No.1299 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1299 of 2023

and

C.M.P(MD)No.6376 of 2023

Ramasamy (Died)

- 1.Rajeswari
- 2.Manikandan
- 3.Chitra
- 4.Thenmozhi

... Petitioners

Vs.

Rathinam (Died)

- 1.Sakunthala
- 2.Ponraj
- 3.Deivakumar

...Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 28.01.2023 passed by the Sub-Judge, Lalgudi in E.P.No.09 of 2020 in O.S.No.04 of 2018.

For Petitioner

: Mr.T.Lenin Kumar



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ORDER

The petitioners are aggrieved by the impugned order dated 28.01.2023 passed by the Sub Court, Lalgudi in E.P.No.9 of 2020 in O.S.No.4 of 2018.

2. By the impugned order dated 28.01.2023, the Execution Court, namely, the Sub Court, Lalgudi allowed E.P.No.9 of 2020 in O.S.No.4 of 2018 filed by the first and second respondents under Order XXI, Rule 36 and Section 151 of the Code of Civil Procedure, 1908 and ordered delivery of suit schedule property on the ground that judgment and decree dated 03.12.2019 passed in O.S.No.4 of 2018 has neither stayed nor set aside. The relevant portion of the impugned order dated 28.01.2023 in E.P.No.9 of 2020 in O.S.No.4 of 2018 reads as under:-

“8. Point:-

a) This execution petition has been filed seeking delivery of possession as per the decree dated 03.12.2019 in O.S.No.04 of 2018 on the file of Sub Court, Lalgudi. Certified copy of the decree filed with the execution petition in O.S.No.04 of 2018 reveals that the decree was passed as such on 03.12.2019 to deliver possession of suit property within 3 months since the date of decree.

b) It is the main contention of the respondents that the first



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respondent filed a suit in O.S.No.1037 of 1992 for specific performance on the file of I Additional Sub Court, Tiruchirappalli and a sum of Rs.15,000/- being the advance amount was ordered to be refunded with interest at 10% per annum, that against which an appeal in A.S.No.316 of 2004 and a cross appeal were preferred before Hon'ble Additional District Judge, Tiruchirappalli and that the appeal was dismissed and the cross appeal was allowed by confirming the judgment of trial Court. It is further contended that the decree was modified to the effect that the defendants 1 and 2 should pay the plaintiff a sum of Rs. 15,000/- with interest at 6% per annum only. It is stated that the suit property of this O.S.No.04 of 2018 and of O.S.No.1037 of 1992 are one and the same. But to prove the same no decree copy has been produced. Only a xerox copy of judgment in A.S.No.316 of 2004 and cross appeal on the file of I Additional District Judge, Tiruchirappalli has been produced along with copy of order in C.M.P.No.3182 of 2022 on the file of Madurai Bench of Hon'ble High Court of Madras. Therefore, the Court is unable to make a connection in between O.S.No.1037 of 1992 and O.S.No.04 of 2018.

c) Even otherwise, there is no stay of operation of decree in O.S.No.04 of 2018. Unless the decree has been stayed, this Court has to proceed only in executing the same. Therefore, all the objections raised on the side of respondent are overruled.

d) In so far as the decree in O.S.No.04 of 2018 concerned it is not inexecutable. It is not prevented by any stay order. This kind of objections should have been raised in the original suit itself. If



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such objections were raised, then again the very same objections cannot be raised in the execution petition. If those objections were not raised, then the respondent will be restricted to raise the claim newly in the execution Court. It is not shown that any appeal has been preferred as against the decree in O.S.No.04 of 2018 where an order of stay of decree has been passed. Therefore, this Court is of the view that the objections shall not be paid heed unless an order of stay is produced. Unless the delivery order is passed, the decree in O.S.No.04 of 2018 cannot be enjoyed by the petitioners. In such view of the matter, delivery of petition mentioned property is ordered.”

3. The petitioners are the legal representatives of the first judgment debtor, namely, late Ramasamy who was the first defendant in O.S.No.4 of 2018. One Mr.Deivakumar was the second defendant in O.S.No.4 of 2018. The suit was filed by the plaintiff. The plaintiff has since deceased, the deceased plaintiff interest is now being represented by the respondents herein. The suit was filed for recovery of possession of the property by the deceased plaintiff Rathinam, the first respondent Sakunthala and one Ponraj.

4. In the suit, the petitioners' father, namely, Ramasamy remained *ex parte* and was set *ex parte* on 25.04.2019. Therefore, O.S.No.4 of 2018 came to be decreed on 03.12.2019 since the petitioners' father late Ramasamy (first defendant) was set *ex parte* on 25.04.2019. E.P.No.9 of 2020 was filed by the



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successful plaintiffs. E.P.No.9 of 2020 filed was also allowed by the execution Court on the ground that no steps were taken by the petitioners to set aside the *ex parte* decree dated 03.12.2019 in O.S.No.4 of 2018.

5. The petitioners have also filed an application for impleading themselves in the suit in I.A.No.1 of 2023 and to set aside the *ex parte* decree dated 03.12.2019. There is no merits to challenge the impugned order. Suit has been decreed on 03.12.2019. Petitioners will have to file an appeal to set aside the *ex parte* decree. The E.P Court cannot be prevented from passing appropriate orders for executing the decree. At best the petitioner can file obstruction petition in E.P.No.9 of 2020 if advised and in accordance with law. Therefore, this Civil Revision Petition is liable to be dismissed. However, liberty is given to the petitioner to take steps for setting aside the *ex parte* decree dated 03.12.2019. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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Index : Yes / No
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C.SARAVANAN, J.

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To

- 1.The Sub-Judge,
Lalgudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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