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C.R.P.(PD).No.2766 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2766 of 2024
and C.M.P.No.14677 of 2024

M/s.Selvaradjalou Chetty Trust,
Rep. by its Chairman Kalyanam,

.. Petitioner

Versus

1. Sarvothaman

Jayalakshmi Ammal (deceased)

Anusuya Ammal (brought on record as per
order dated 02.12.1969 vide memo filed
by D3 (died))

Padmini Chandrasekaran (died)
Represented by R.Krishnamurthy
Executor under Will of
Padmini Chandrasekaran

Sivagami Ammal (died, no L.R)

2. Anusuya Ammal (Transposed as Plaintiff)

Somasundaram Chettiar (died)

3. T.T.Srinivasan (Executor under the Will of
Somasundaram Chettiar and Kuppammal -
Intervening Party) .. Respondents



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree, dated 04.06.2024 passed in E.A.No.172 of 2022 in E.P.No.300 of 2021 in O.S.No.6 of 1968 on the file of the Principal District Judge, Puducherry.

For Petitioner : Mr.P.Chandrasekar

For Respondents : Mr.K.Selvaraj, for R1

ORDER

This Civil Revision Petition arises against the order of the learned Principal District Judge at Puducherry in E.A.No.172 of 2022 in E.P.No.300 of 2021 in O.S.No.6 of 1968.

2. The civil revision petitioner before me is a third party to the proceeding. O.S.No.6 of 1968 had been presented by one Anusuya Ammal, the daughter of the decree holder herein seeking for several reliefs. The suit did not go for trial. The matter was compromised and a compromise decree was passed on 29.04.1970. By virtue of this decree, one Padmini Chandrasekar, who was a defendant in the suit, was granted the A-schedule mentioned property and the first respondent herein was granted the B-



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schedule mentioned property. Apart from the allotment of the properties, Padmini Chandrasekar agreed to pay a sum of Rs.7,00,000/- to the first respondent herein in addition to the allotment of B-schedule. There is no dispute that Padmini Chandrasekar had made the payment of Rs.7,00,000/-. Subsequently, she passed away. During her lifetime, she created a trust by name M/s.N.Selvaradjalou Chetty Trust. It is this trust which is the civil revision petitioner.

3. The trust was supposed to take care of the properties which were allotted to Padmini Chandrasekar. The trust has right over the A-schedule mentioned property. Insofar as the B-schedule mentioned property, disputes arose between the first respondent and his son by name Vinod Babu. The father presented C.S.No.149 of 1980 through his mother and natural guardian seeking for a declaration that he is entitled to the properties that have been allotted to the first respondent. In the meantime, there was a dispute over the "Will" that had been executed by Padmini Chandrasekar creating the trust. The Original Petition filed for probate of her Will was converted into a Testamentary Original Suit and numbered as T.O.S.No.28 of 1982. By way of a common judgment, dated 28.10.1995, C.S.No.149 of



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1980, initiated by Vinod Babu against Padmini Chandrasekar as well as the first respondent herein was dismissed. The Testamentary Original Suit in T.O.S.No.28 of 1982 was decreed. In other words, by a judgment, dated 28.10.1995, this Court had confirmed that A-schedule mentioned property belongs to Padmini Chandrasekar and in turn to the civil revision petitioner trust and B-schedule mentioned property, which had been allotted pursuant to the compromise decree, dated 29.04.1970 belongs to the first respondent. A specific finding to that effect has been given in paragraph No.85 of the said judgment.

4. Vinod Babu, aggrieved by the said judgment and decree, preferred an Original Side Appeal in O.S.A.No.299 of 1996. The Original Side Appeal also came to be dismissed on 20.03.2002. Against the concurrent findings, a Special Leave Petition was preferred to the Supreme Court in Special Leave to Appeal (Civil).CC.No.8268 of 2002. The Special Leave Petition was also dismissed on 01.11.2002. In fine, the allotment that had been made pursuant to the compromise decree of the year 1970 had attained finality.



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5. Pending this litigation, the civil revision petitioner trust initiated C.S.No.504 of 1998. In the said suit, the relief that was sought for was a declaration that the sale deed that has been executed by one V.Arumuga Chandran in favour of the defendants 3 to 6 therein, was null and void. The compromise decree, on the basis of which properties were divided into A and B schedule was relied upon by the civil revision petitioner trust in that proceeding. The suit was decreed by a judgment of this Court, dated 18.09.2006. Against the said judgment and decree, another Original Side Appeal was preferred in O.S.A.No.230 of 2007. The said appeal was also dismissed on 08.09.2016.

6. Thereafter, when the first respondent herein attempted to register the compromise decree dated 29.04.1970 with the Registrar, there was some resistance. Hence, he was constrained to move this Court by way of a Writ Petition in W.P.No.18593 of 2018. The said Writ Petition was dismissed on 23.01.2019. Aggrieved by the same, the first respondent herein preferred a Writ Appeal in W.A.No.336 of 2019. The said Writ Appeal came to be allowed by a Division Bench of this Court on 07.02.2019. Thereafter, the decree, dated 29.04.1970 came to be registered.



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7. I have set-forth all these facts only in order to show that the civil revision petitioner trust, at all points of time, stood by the compromise decree, dated 29.04.1970. In fact, it initiated proceedings successfully to implement the decree. Having stood by the compromise decree for more than fifty years, when an attempt was made by the first respondent herein to execute the decree by presenting E.P.No.300 of 2021, the civil revision petitioner filed an application under Section 47 to declare the decree as inexecutable. After receipt of a counter from the first respondent herein, the learned Principal District Judge of Puducherry dismissed the petition. Against which, the present Revision is filed.

8. Heard Mr.P.Chandrasekar, learned Counsel for the civil revision petitioner and Mr.K.Selvaraj, learned Counsel for the caveator/decreed holder.

9. Mr.P.Chandrasekar would submit that the trust has a right over the E.P schedule mentioned property and the first respondent cannot be permitted to execute the decree. He would point out that under the original



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compromise decree, eight items of property had been allotted to the first respondent/decree holder, whereas, he has filed an Execution Petition for other items also. He would submit that the learned Principal District Judge did not apply his mind to the facts of the case and hence it requires interference.

10. Per *contra*, Mr.K.Selvaraj, inviting my attention to all the previous proceedings, would submit that this Court in C.S.No.149 of 1980 had clearly and categorically held that Padmini Chandrasekar will be entitled to the A-schedule mentioned property as per the compromise decree, dated 29.04.1970 and the B-schedule mentioned property belongs to Sarvothaman, the first respondent. He would point out that this had been challenged upto the Supreme Court and it had attained finality. He would further state that being a third party, the civil revision petitioner has no right over the properties which the decree holder wants to execute. Hence, he would pray for confirmation of the order.

11. I have considered the arguments of both sides and have gone through the records.



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12. At the outset, I have to point out that an application under Section 47 of the Code of Civil Procedure is not maintainable at the instance of a third party. Section 47 empowers the executing Court to decide upon the discharge, satisfaction or executability of a decree between the decree holder and the judgment debtor or their legal representatives. It does not enable a third party to the proceeding to file an application to invite the Court to decide on executability of the decree. Therefore, the petition filed by the civil revision petitioner is not maintainable.

13. Apart from that, I have to take notice that the decree holder had obtained a decree as early as 29.04.1970 and even after the passage of 54 years and more, is still struggling to get possession of the property which had been allotted to him. Padmini Chandrasekar, the person who created the civil revision petitioner trust did not contest the right of the first respondent decree holder at any point of time. On the contrary, she had accepted the allotment of the B-schedule mentioned property which is the subject matter of execution and further paid a sum of Rs.7,00,000/- to the first respondent and had undertaken that she will not alienate the properties



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allotted to her until the discharge of this amount of Rs.7,00,000/-. This fact shows that Padmini Chandrasekar was not only happy with the allotment of A-schedule in her favour, but, she also did not have any objection in allotment of the B-schedule in favour of the first respondent. When the testator herself did not stake a claim over the B-schedule mentioned property, I find it truly surprising that an entity created by the testator should plead that it has a right over the B-schedule.

14. The first respondent/decree holder's right over the B-schedule mentioned property was challenged before this Court and it was rejected. Though the decree in O.S.No.6 of 1968 was not challenged, by virtue of the judgment of this Court in C.S.No.149 of 1980, dated 28.10.1985, it stood confirmed. The judgment and decree in C.S.No.149 of 1980 had been tested in appeal till the Supreme Court and the first respondent herein was successful in all those proceedings. All that remained for the Court below was to grant the decree holder the benefit of the decree he had obtained. That is exactly what has been done by the learned Trial Judge.



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15. The civil revision petitioner, not having any right, title or interest over the B-schedule mentioned property, cannot prevent the decree holder from taking possession over the property. The application before the learned Principal District Judge in E.A.No.17 of 2022 is nothing but a proceeding in order to obstruct the decree holder from taking possession of the property which belongs to him. I do not find any mistake with the order of the learned Principal District Judge in E.A.No.172 of 2022 in E.P.No.300 of 2021 in O.S.No.6 of 1968, dated 04.06.2024.

16. The Civil Revision Petition is dismissed. The learned Principal District Judge, Puducherry shall take note of the fact that since the decree holder has been knocking at the doors of the Court seeking justice for the past 54 years, he shall ensure the delivery of the possession of the property is given to the decree holder him at the earliest. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs



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The Principal District Judge,
Puducherry.



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V.LAKSHMINARAYANAN, J.

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