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C.R.P.No.2774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2774 of 2022
and C.M.P.No.14604 of 2022

Smt.Dhanalakshmi

-Vs-

... Petitioner

1.Arulmighu Kasi Viswanathar Temple
rep.by its Executive Officer
Eswaran Koil Street, West Mambalam
Chennai 600 033.

2.Smt.M.S.Kanagavali

3.Smt.Yamuna

5.Smt.Rajeswari

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order dated 15.07.2022 passed in E.A.No.3956 of 2018 in E.P.No.2244 of 2007 in O.S.No.2397 of 1986 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Venkatasamy

For Respondents : Mr.A.K.Sriram, Senior Counsel
for M/s.A.S.Kailasam Associates



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ORDER

The present revision arises against the order passed by the learned X Assistant City Civil Judge, Chennai in E.A.No.3956 of 2018 in E.P.No.2244 of 2007 in O.S.No.2397 of 1986.

2. O.S.No.2397 of 1986 is a suit presented by the temple viz., Arulmighu Kasi Viswanathar Temple, represented by its Executive Officer for recovery of possession of suit schedule mentioned property after evicting the defendants and removal of the superstructure. The suit was contested from 1986 to 08.12.2007. The suit was decreed. To put the decree into execution, E.P.No.2244 of 2007 was presented. By the time the execution petition was presented, the original judgment debtor had passed away and so also his son, leaving behind the civil revision petitioner as his legal representative.

3. On being served with notice, she took out an application under Section 47 of the Civil Procedure Code stating that the decree is unexecutable by virtue of two provisions under the Tamil Nadu Minor Inams Abolition Act (Act 30 of 1963). The two provisions that the petitioner relied upon are Section 13 and Section 42. This came to be rejected by the executing Court, against which the present civil revision petition.



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4. On ordering notice in the revision, M/s.A.S.Kailasam Associates entered appearance on behalf of the decree holder. Heard Mr.V.Venkatasamy for the petitioner and Mr.A.K.Sriram for M/s.Kailasam Associates.

5. The contention of Mr.Venkatasamy is that by virtue of Section 13 of the Act 30 of 1963, the building vests in the person who held it. In view of the fact that the temple had handed over possession of the property to the petitioner's father-in-law, the building would vest in the father-in-law of the petitioner. Therefore, he would contend that by the operation of Section 13(1) read with Section 42, the decree became unexecutable. The interpretation which Mr.Venkatasamy would want to give to the said provisions is achieved by a combined reading of the two sections; from the notified date the temple is no longer the owner of the property and therefore the suit for ejectment is not maintainable. He would further contend that since the suit is not maintainable, the decree passed by the Court in such a suit is barred and this plea can be raised at any stage of the proceedings. In fine, the argument is, as settlement patta had been granted in favour of the petitioner's predecessor under Section 13, by virtue of Section 42, the temple is not the owner and consequently the suit should not have been decreed. He would then deal with the executability and state that it can be gone into under Section 47 of the Civil Procedure Code.



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6. Mr.A.K.Sriram, placing reliance upon the judgment in **A.V.Hanifa -vs- Salim Dhanu (AIR 1992 Mad 111)**, in particular drawing my attention to Para 12, would submit that this issue ought to have been raised in the suit itself and it had not been so raised. Therefore, it cannot be raised under Section 47. His second submission would be that the petitioner is the daughter-in-law of the original tenant and the original tenant himself conceding to the ownership of the temple had taken out an application under Section 9 of the City Tenants Protection Act and therefore, the original defendant having taken the defence, it is not open to the legal representative to seek an enlargement of the said position under Section 47 of the Act. He would place strong reliance upon the judgment in **R.Manicka Naicker -vs- E. Elumalai Naicker (1995) 4 SCC 156** and would plead for dismissal of the revision.

7. I have carefully considered the arguments on either side. The position that I have to decide is, whether an application under Section 47 is maintainable by a legal representative of a deceased judgment debtor as it goes beyond the scope of the defence taken by the judgment debtor. Section 47 of the C.P.C., empowers the executing court to go into all the questions relating to the executability, satisfaction and discharge of a decree. The Section underwent amendment in the year 1976 in order to prevent it to be treated as a suit. The scope of Section 47 is



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narrow and pointed, whereas at the time of trial, the entire field is open for both the parties to play, when it comes under Section 47, the field is highly restricted and it is not open to the judgment debtor to reagitate the questions, which he/she has raised before the trial Court or before the appeals therefrom.

8. The principle of might and ought found under the explanation to Section 11 of the Code of Civil Procedure applies to Section 47 also. Any question which might or ought to have been made as a ground of attack in the suit and not taken by the defendant cannot be raised by the same defendant or his or her legal representative while in the position of being a judgment debtor. The aspect on Section 13 and Section 42 of the Minor Inam Abolition Act not having been raised in the suit bars the present revision petitioner from raising it under Section 47. In this regard, it is pertinent to note the ratio of this Court in the case of **A.V.Hanifa -vs- Salima Dhanu, AIR 1992 Mad 111**. In the **Hanifa** decision, this Court, while dealing with the scope of Section 47 of the Civil Procedure Code held as follows:

" 9. Learned counsel for the petitioner submits that u/s.47(1) Civil P.C., all questions arising between the parties to the suit in which a decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Learned counsel wants me to interpret this Section



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as meaning that any question which is raised by a party to the suit should be considered by the executing Court if it relates to execution, discharge or satisfaction of the decree.

10. Such a wide interpretation is unsustainable. When the Section refers to all questions it only means questions which were not raised in the suit and decided by the trial Court. If a question was raised before the trial Court at the stage of trial and decided by the trial Court it is not open to the parties to raise it again at the stage of execution. Similarly, if a question ought to have been raised by a party before the trial Court at the stage of trial and if he omits to raise it, even then he cannot raise it u/s.47 before the executing court."

9. If I were to ignore this aspect of the case and try to deal with the merits of the same, as rightly pointed by Mr.A.K.Sriram, this issue has been concluded by the judgment of the Supreme Court in **R.Manicka Naicker -vs- E. Elumalai Naicker (1995) 4 SCC 156**. That was also a case where joint patta had been granted by the Settlement Officer during the pendency of the proceedings. Patta had been granted in respect of the land and ground rent patta had been granted for the building of the tenant. This was granted pending the litigation for ejectment by the landlord as against the tenant. The order of settlement Tahsildar in granting such patta was taken on revision and it was also confirmed by the



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Commissioner for Land Administration. The patta was projected as barring the suit before the executing court. The executing court accepted the plea and dismissed the execution petition. Challenging the same, a revision was preferred to this Court and this Court held where a decree has been duly passed by the court of competent jurisdiction, it cannot be nullified by the grant of patta under the settlement proceedings. The view of this Court was confirmed by the Supreme Court in the aforesaid judgment in the following terms:

" 12. The contention of the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by Section 13(1). Hence, the site on which the building stands will vest in the person who owned it immediately before the appointed date.

13. In the case of *Sri Kumarakattalai Subrahmanyaswami Devasthanam vs. K.S.Sundararajulu Chettiar* a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building, where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date



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would be entitled to recover possession from his tenant. We respectfully agree with these findings of the learned Single Judge."

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10. This in my view, concludes the position that Section 13 and Section 42 cannot be projected by the judgment debtor under Section 47 in order to argue that the grant of patta under the settlement proceedings takes away the right of the landlord to initiate proceedings for eviction. Apart from both these grounds, as pointed out by Mr.A.K.Sriram, the fundamental basis on which this application has been taken by the legal representative itself is wanting. Tmt.Dhanalakshmi is not the tenant. The original tenant was her father-in-law M.G.Sundararajulu. If Sundararajulu could not have taken this defence, then Dhanalakshmi who steps into shoes as legal representative of the judgment debtor is also barred from taking such a defence. This is because of the settled position of law that a judgment debtor's legal representative cannot claim a right than what had been claimed by the judgment debtor himself.

11. In the light of all the above, I have absolutely no doubt in confirming the order and decretal order of the learned X Assistant City Civil Judge at Chennai in E.A.No.3956 of 2018 in E.P.No.2244 of 2007 dated 15.07.2022. In fine, the Civil Revision Petition is dismissed. Costs throughout. Consequently, connected miscellaneous petition is closed.

12. The suit being of the year 1986, the learned X Assistant City Civil Judge



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is requested to give all the attention and priority in the matter and ensure that the decree is executed within a period of four months from the date of receipt of a copy of this order. He shall, on compliance of the execution, submit a report to this Court.

05.04.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

1.X Assistant City Civil Judge,
City Civil Court, Chennai.

2.The Executive Officer
Arulmighu Kasi Viswanathar Temple,
Eswaran Koil Street, West Mambalam
Chennai 600 033.



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V. LAKSHMINARAYANAN, J.

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