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C.R.P.Nos.4361 & 4362 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.Nos.4361 & 4362 of 2024
and C.M.P.No.24306 of 2024

T.Pandurangan

... Petitioner in both C.R.Ps.

Vs

Sri Kannabiran Temple,
Represented by its Hereditary Trustee,
M.Jayaraman
S/o. T.Mayava Ramanuja Dasar,
No.25-A, Chinnakuzhanthai Street,
Maduma Nagar, Sembium,
Chennai – 600 011.

... Respondent in both C.R.Ps.

Prayer in C.R.P.No.4361 of 2024 : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the order dated 23.08.2024 passed by the learned IX Assistant Judge, City Civil Court, Chennai in E.A.No.7 of 2024 in E.P.No.4011 of 2019 in O.S.No.1513 of 2001.

Prayer in C.R.P.No.4362 of 2024 : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the order dated 23.08.2024 passed by the learned IX Assistant Judge, City Civil Court, Chennai in E.A.No.6 of 2024 in E.P.No.4011 of 2019 in O.S.No.1513 of 2001.



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In both C.R.Ps.,

For Petitioner : Mr.A.D.Janarthanan

For Respondent : Mr.S.Poovendhan

ORDER

These Civil Revision Petitions have been filed against the orders passed by the IX Assistant City Civil Court, Chennai, on 23.08.2024 in E.A.Nos.6 & 7 of 2024 in E.P.No.4011 of 2019 in O.S.No.1513 of 2001.

2. Brief facts of the case are as follows :-

2.1. The petitioner is the defendant in the suit filed by the respondent/plaintiff in O.S.No.1513 of 2001 on the file of the V Assistant City Civil Court, Chennai, seeking for the relief of delivery of vacant possession of the 'B' schedule property. The trial Court, based on the oral evidence of PW1 & PW2 and the documentary evidence viz., Ex.A1 to 6, had decreed the suit vide Judgment dated 31.01.2008.

2.2. Against which, the petitioner/defendant had preferred an appeal suit in A.S.No.291 of 2010 before the I Additional City Civil Court, Chennai.



Pending the appeal, the petitioner/defendant had filed miscellaneous petition in C.M.P.No.830 of 2012 seeking to mark some documents as additional evidence and in C.M.P.No.1305 of 2013 seeking for appointment of Advocate Commissioner. On 06.08.2014, both the appeal and the miscellaneous petitions were dismissed by the first appellate Court.

2.3. Aggrieved over the dismissal of the first appeal, the petitioner/defendant had preferred the second appeal in S.A.No.918 of 2014 before this Court and vide judgment and decree dated 12.02.2015, this Court had allowed the second appeal by setting aside the judgment and decree passed in A.S.No.291 of 2010 dated 06.08.2014 and thereby, the matter was remanded to the first appellate Court. Further, this Court, while allowing the second appeal, had directed to appoint an Advocate Commissioner to measure the suit property and the adjacent properties with the help of a Surveyor and submit a Report as to whether the petitioner/defendant is in occupation of any portion of the property in S.No.16 or, if not, whether he is in occupation of S.Nos.17 and 18 and further directed the Advocate Commissioner to verify whether there is a chance in S.No.16 and new survey number has been assigned for the land and that will also be taken into account while measuring the properties.



2.4. Based on the same, the first appellate Court, after hearing both sides and based on the Advocate Commissioner's Report, by a Judgment and decree dated 05.11.2016, had modified the judgment and decree passed by the trial Court regarding the 'B' schedule property. As per the modified judgment, the decree holder was entitled for delivery of vacant possession of 'B' schedule property in respect of Survey Number 17/Part marked as “abcd” in Surveyor Plan 2 in Ex.C1 Series.

2.5. The above said judgment and decree in A.S.No.291 of 2009 dated 05.11.2016 was again challenged by the petitioner/defendant in S.A.No.311 of 2017 before this Court. The said second appeal was dismissed vide order dated 15.06.2017.

2.6. The respondent/decree holder had filed the execution petition seeking for delivery of vacant possession in the year 2019 and pending execution petition, the petitioner/judgment debtor had filed a petition under Section 47 of CPC seeking to dismiss the execution petition and the same was rejected by the executing Court on 21.09.2022. Against which, the petitioner/judgment debtor had filed C.R.P.No.3882 of 2022 before this Court and this Court, by an order dated 28.11.2022, dismissed the same and held that the respondent/decree holder was



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entitled to recover possession of the 'B' schedule property as per the decree confirmed in S.A.No.311 of 2017.

2.7. Again, the petitioner/judgment debtor had filed yet another application in E.A.SR.No.15886 of 2023 under Section 151 of C.P.C., seeking to appoint Taluk Surveyor for accompanying the bailiff to identify the correct 'B' schedule property, which is under the temple's property in Survey No.17 and the same was also rejected on 03.03.2023. Aggrieved over the same, the petitioner/judgment debtor had filed a C.R.P.No.1587 of 2023 before this Court and the same was also dismissed on 24.07.2023.

2.8. The decree was for delivery of possession of 120 Sq.ft of 'B' schedule property on execution warrant dated 26.09.2023 and since the decree holder had submitted that the execution was not taken in full, again, the Court had ordered for fresh delivery warrant for execution in full. The said warrant was returned by the bailiff stating that the execution petition has to include the modified 'B' Schedule property as the judgment and decree dated 05.11.2016 passed in A.S.No.291 of 2010. Thereby, the respondent/plaintiff had filed an application in E.A.No.7 of 2024 under Order VI Rule 17 of CPC seeking to pass an order permitting the decree holder to amend the schedule to the execution



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petition in E.P.No.4011 of 2019 in terms of the modified decree passed in A.S.No.291 of 2010. It was objected to by the petitioner/ judgment debtor, however, the executing Court, by an order dated 23.08.2024, had allowed the application.

2.9. Further, the executing Court, by an order dated 23.08.2024, had dismissed the application filed by the petitioner/judgment debtor in E.A.No.6 of 2024 under Section 151 CPC, seeking to recall the delivery warrant issued by the executing Court in E.P.No.4011 of 2019 dated 11.10.2023. Aggrieved over the orders passed in E.A.Nos.6 & 7 of 2024 dated 23.08.2024, the present revision petitions have been filed by the petitioner/plaintiff.

3. Learned counsel for the petitioner submitted that the Executing Court erred in not recalling the delivery warrant issued by the executing Court in E.P.No.4011 of 2019 on 11.10.2023 and in amending the decree by allowing the decree holder/respondent to include the modified 'B' Schedule property as the judgment and decree dated 05.11.2016 passed in A.S.No.291 of 2010. He further submitted that the modified decree of the 'B' schedule property is only 120 Sq.ft and the amendment sought for cannot be permitted. He also submitted that the



fresh warrant could not be executed as already the decree holder had taken possession of the 'B' schedule property of 120 Sq.ft and the decree holder cannot seek amendment petition beyond the decree. Thereby, he seeks to set aside the orders passed in E.A.Nos.6 & 7 of 2024 dated 23.08.2024.

4. The submissions of the learned counsel for the respondent/decrece holder are as follows :-

4.1. This is the fourth round of litigation by the petitioner. The decree was obtained in 2008 and subsequently, the petitioner had filed the Appeal Suit in A.S.No.291 of 2010 and the same was dismissed. Later, by filing the second appeal in S.A.No.918 of 2014, the appeal suit was remanded back and once again, the first appeal was dismissed on 05.11.2016.

4.2. Thereafter, the petitioner had filed an application in E.A.SRNo.50690 of 2022 contending that the property in occupation of the judgment debtor was all together different from the 'B' Schedule property and the same was dismissed on 21.09.2022. Against which, he filed a revision petition in C.R.P.No.3882 of 2022 before this Court and this Court finding that the said point was considered and negatived by this Court in S.A.No.311 of 2017, had dismissed



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the revision petition on 28.11.2022.

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4.3. This Court had also held that it is settled law that the points, which were raised in the suit and confirmed in the second appeal, cannot be re-agitated by filing an application under Section 47 of CPC.

4.4. Since the petitioner/judgment debtor is prolonging the execution of the decree, the respondent/decree holder had earlier approached this Court in C.R.P.No.87 of 2023, wherein, the respondent was put on notice and this Court, while disposing the revision petition on 12.01.2023, had held that the judgment debtor is not entitled to take any additional grounds or other grounds with reference to the identity of the property since the issues were adjudicated in the three proceedings upto the High Court and also held that the execution Court cannot venture into the adjudication of disputes between the parties and the decree holder must be allowed to enjoy its fruits and that the property belongs to the respondent and the petitioner is unnecessarily causing prejudice and delaying the process.

4.5. On the behest of the petitioner/judgment debtor, the 2nd Advocate Commissioner was appointed and he had conducted the enquiry in the presence of



the Taluk Surveyor and the Taluk Surveyor had clearly earmarked the area.

Thereafter, the respondent, finding that there were some conclusions have to be made in the decree based on the Report of Advocate Commissioner and the Taluk Surveyor, had filed an application in E.A.No.7 of 2024 seeking for amendment and the executing Court had, rightly finding that there is no discrepancy, allowed the application on 23.08.2024. At the same time, the executing Court had also dismissed the application filed by the petitioner/judgment debtor in E.A.No.6 of 2024, seeking to recall the delivery warrant issued in E.P.No.4011 of 2019 dated 11.10.2023, stating that there is no merit in that petition. Hence, he sought for dismissal of these revision petitions.

5. Heard the learned counsel for the petitioner and perused the records.

6. Having gone through the records, it is seen that the suit was decreed in the year 2008 and the petitioner had been dragging the matter by filing petition after petition. Therefore, despite the decree being passed in the year 2008, the respondent/decreed holder is unable to enjoy the fruits of the decree. Thereby, this Court finds that the trial court, rightly finding that the amendment petition is



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necessary for the execution of the decree, had allowed the application and in respect of the application filed by the petitioner seeking to recall the delivery warrant, had dismissed the same stating that the petition is a frivolous one filed to thwart the respondent from enjoying the decree. Thereby, the proceedings initiated by the judgment debtors are only to thwart the decree.

7. In view of the above, this Court does not find any illegality or infirmity in the orders passed by the learned trial Judge. Accordingly, the Civil Revision Petitions stand dismissed. Consequently, connected miscellaneous petition is closed. No costs.

30.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To
The IX Assistant City Civil Court, Chennai.



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A.D.JAGADISH CHANDIRA, J.

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