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C.R.P. No.4198 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.4198 of 2022
and C.M.P. No.22002 of 2022

1. K. Parthasarathy S/o.Late Krishna Pillai
2. K. Munusamy S/o. Late Krishna Pillai ... Petitioners / Judgment Debtors / Defendants.

Vs.

Mrs. Pappathiammal (deceased)

M. Duraisamy Pillai (deceased)

1. Raju

2. Vaduvambal

3. Saraswathy

4. Vijaya

..... Respondents / Decree Holders / Plaintiffs.

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 07.09.2022 in E.P. No.415 of 2017 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr. D. Vijayan

For Respondents : Mr. I. Lakshmana Shankar

ORDER

The Civil Revision Petition has been preferred challenging the order passed in E.P. No.415 of 2017 on the file of IX Assistant City Civil Court, Chennai, wherein the respondents herein have filed an execution petition before the Executing Court to remove the encroachment made by the



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petitioners as per decree passed in the original Suit. Aggrieved by the said order, the present revision petition has been filed.

2. According to the petitioners, they are the respondents in the execution petition, which was filed by the petitioners to execute decree passed in O.S. No.1848 of 2005 dated 28.01.2009. In fact, the respondents herein have filed a Suit in O.S. No.1848 of 2005 and the same was decreed on 28.01.2009. The petitioners herein have preferred an appeal in A.S. No.335 of 2010 and the said appeal was dismissed on 20.08.2016 and thereafter no any further appeal was filed. Therefore, the respondents herein have filed the execution petition. In the said execution petition, the impugned order is passed by directing the petitioners herein to remove the encroachment.

3. According to the respondents, they filed the main Suit for the relief of declaration and mandatory injunction and the same was decreed on 28.01.2009 and the portion mentioned in the Schedule as 'JK' in 'CDJK' was ordered to be removed. After the decree and judgment, the present execution petition in E.P. No.415 of 2017 was filed and the same was ordered in favour of the respondents by directing the petitioners to remove the portion mentioned in the decree. The Trial Court after hearing both sides and perusing the records, allowed the execution petition and directed the



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petitioners to remove the portion mentioned as 'JK' compound wall within the portion of CDJK described in the Plaintiff's sketch. Aggrieved by the said order, the present civil revision petition is filed.

4. The learned counsel appearing for the petitioners would contend that these petitioners are the defendants in the main Suit and the respondents in the execution proceedings. These petitioners are the absolute owners of the properties of 440 square feet situated in the southern portion of which is not the subject matter of the execution petition. The said property was purchased by these petitioners through Sale Deed dated 23.02.1984 to an extent of 440 sq. ft. out of 1452 square feet in southern portion out of total extent along with 3 feet passage for exclusive use and occupation and right of access to street in Block No.17, (Old Survey No.147), T.S. No.148/2, in Upparapalayam Street, Kottur Village. The respondents herein filed the Suit for the relief of recovery of possession in O.S. No.1848 of 2005 and the same was challenged through an Appeal in A.S. No.335 of 2010 and during the pendency of the said appeal, the 1st respondent died and then the other respondents were added as parties. While so, these respondents did not give any right over the 3 feet passage, which was given only for them to access their respective portion and to right of access to street, the schedule of property therein. The petitioners also obtained patta in their favour and they have also paid house tax, property tax



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and also paid water tax to the properties. The respondents raised a super structure on 20.02.2017 over the Suit property, which is situated on the northern side of the schedule mentioned properties. At that time, they also erected concrete pillar over the 3 feet passage in which these petitioners are only having exclusive rights and title. The respondents are trying to trespass into the property and to encroach the 3 feet passage, thereby they filed a Suit in O.S. No.1154 of 2017 and the same is pending. The respondents made construction without obtaining proper permission from the concerned authorities. The decree passed in O.S. No.1848 of 2005 is in executable and the respondents have become owners of 1012 square feet of property which is kept remaining after sold out an extent of 440 square feet to the petitioners along with 3 feet breadth passage to access the petitioners' property of 440 square feet. Therefore, the above said decree is in executable, but the Trial Court without considering the same, passed the impugned order. Therefore, the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that the respondents are the decree holders and the said Suit is filed for recovery of possession and the same was decreed in their favour. The said decree was challenged through an appeal in A.S. No.335 of 2010 and the same was also dismissed. Therefore, the Suit attained finality. Against the said



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appeal, no further appeal has been filed by the petitioners. Thereafter, the petitioners filed a Suit in O.S. No.1154 of 2017 as against these respondents for the relief of permanent injunction and the same was also dismissed. In fact, on the date of filing of this civil revision petition, the said Suit was disposed of by dismissing the same. Therefore, the petitioners have not come with clean hands by suppressing the material facts and since already the Trial Court has decreed the Suit in favour of the respondents and the same was also confirmed by the I Appellate Court, the petitioners have to obey the decree passed by the Trial Court. Moreover, these petitioners in the written statement itself admitted that if the Plaintiffs succeeded in the case, they will abide by the order of the Court. Therefore, after filing of written statement, the Suit was decreed in favour of the respondents. The Trial Court, after considering all the aspects correctly ordered to remove the encroachment of JK portion compound wall within the portion of CDJK portion described in the Plaint sketch. Now the petitioners have preferred this civil revision petition without any basis and thereby, the civil revision petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. In this case, there is no dispute that already the Suit has been decreed in favour of the respondents and the same was also confirmed through



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judgment passed by the I Appellate Court in A.S. No.335 of 2010 and thereafter the respondents herein have filed an execution petition for delivery of possession. According to the petitioners, they purchased the property through a Sale Deed dated 23.02.1984 to an extent of 440 sq. ft. Already they also filed a Suit in O.S. No.1154 of 2017 as against these respondents for the relief of permanent injunction and the same was also dismissed. Therefore, title of the property has been declared by the competent Courts and now, the petitioners in the execution proceedings cannot challenge the judgment passed by the Trial Court and the executing Court has to go by the decree and cannot go beyond decree.

8. At this stage, the learned counsel appearing for the petitioners has brought to the knowledge of this Court that the respondents herein in their counter filed in earlier proceedings in O.S. No.1154 of 2017 admitted that they have only right over the property to an extent of 1012 square feet. The same has not been agitated before the Trial Court and the executing Court has to execute the decree in terms of the decree passed in the original Suit. Therefore, the contention of the petitioners that the respondents admitted the extent and they filed the suit for larger extent is not acceptable. However, the learned counsel for the petitioners requested this Court that at the time of delivering the property, the property has to be measured in terms of the decree



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and the learned counsel appearing for the respondents also has no objection to deliver the property in terms of decree after proper measurement.

9. Therefore, in view of the above said submissions, it is appropriate to direct the Trial Court at the time of ordering delivery, measurement has to be taken and after measurement in terms of decree, the property has to be delivered.

10. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

08.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To
The IX Assistant Judge, City Civil Court, Chennai.

P.DHANABAL, J.,

mjs



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