



CRP.No.3 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.04.2024

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3 of 2023
and
CMP.No.30 of 2023

Radha (Died)
S.Raveeswaran @ Ravi (Died)

(Cause title accepted vide Court order dated 20.12.2022 made in
CMP.No.22028 of 2022 in CRP.Sr.No.136408 of 2022 by SMSJ)

1.S.Rajendran
2.S.Manikandasamy
3.Dhanalakshmi
4.Sargunapandiyan
5.Poorani

... Petitioners

Versus

A.Gurusamy

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to strike off the E.A.No.24 of 2022 in E.P.No.45 of 2004 in O.S.No.8
of 1981 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.T.Gowthaman, Senior Counsel
for Mr.M.Guruprasad

For Respondent : Mr.C.S.Saravanan

ORDER



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The petitioners have filed this petition to strike Off the E.A.No.24 of 2022 in E.P.No.45 of 2004 in O.S.No.8 of 1981 on the file of the District Munsif Court, Avinashi.

2. Heard Mr.T.Gowthaman, learned Senior Counsel for Mr.M.Guruprasad learned counsel for the petitioners and Mr.C.S.Saravanan, learned counsel appearing for the respondent and perused the materials available on record.

3. The revision petitioners herein are the respondents in E.A.No.24 of 2022 and decree holder in E.P.No.45 of 2004 and plaintiff in O.S.No.8 of 1981. The respondent herein is the 25th respondent in E.P.No.45 of 2004 as legal heirs of the 3rd defendant. The said E.A.No.24 of 2022 was filed by the respondent herein before the Executing Court under Section 47 and Section 151 of CPC, and the same was challenged by the petitioners / decree holders in E.P.No.45 of 2004.

4. The learned counsel for the petitioners submitted that, according to the petitioners, the Executing Court has erred in numbering the petition filed under Section 47 of Code of Civil Procedure on 05.08.2022, by the



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respondent in respect of certain issues, which was already decided in earlier proceedings in the main execution petition, despite of the objection raised by him while numbering the said application. Further, he also contended that in CRP.Nos.2436 of 2012 and 3108 of 2012, this Court has already given a direction to issue notice as per Order XXI Rule 22 of Code of Civil Procedure, which was objected to, as there was no proper notice served. He also submits that already while impleading the legal heirs R13 to R27 through EA.No.33 of 2014, it was resisted by the present petitioners that it was barred by limitation, but the same was allowed. Against which CRP.No.4493 of 2014 was preferred, wherein the findings of the Executing Court were confirmed and held that the petition was filed within the limitation, accordingly, the revision petition was dismissed on 04.12.2014 against which Special Leave to appeal (c) No(s).22142/2015 was filed and the same was dismissed on 14.08.2015 as there is no ground for interference. Further, the Executing Court ought to have considered that the respondent is squatting to grab the property in which they have no title or possession and also denied the possession of the suit schedule properties at this stage of execution when the suit has attained its finality against which no appeal before the Apex Court. Therefore, the application filed by the petitioner under Section 47 of the Code of Civil Procedure seeking the Executing Court to decide certain issues which were already decided in the earlier proceedings and the relief claimed also



beyond the scope of under Section 47 of Code of Civil Procedure and numbering the application itself would amount to re-agitation which amount to abuse process of law. Hence, he prayed to strike Off E.A.No.24 of 2022 by allowing this Civil Revision Petition.

5. The contention of the respondent is that he is the 25th respondent in the Execution Petition and also legal heirs of the 3rd defendant / Avinashiappan, but his father originally indicated as tenant on the ground, belongs to the 1st and 2nd decree holders and put up Thanam de-soul subsequently, he purchased the property in the year 1973 and they enjoyed the property as the absolute owner until the year 2012, as legal heirs they enjoying the property. As on date, the property described in the execution petition in respect of Item Nos. 1 to 3 is unidentified property and it is not also under the possession of the decree holder. Further, in the appeal proceedings in A.S.No. 201 of 1983, the property concerned with is totally differs from the property belongs to the 3rd respondent. Even as per the order passed in Second Appeal. Nos.1281 of 1984 and 1623 of 1984 the decree holder has no right to file the execution proceedings. Besides, the execution petition has also not been filed within time and proper notice also not given to the legal heirs. Further, he would vehemently contend that the property found in the execution petition as well as the property purchased by the father /



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Avinasiappan is totally different. Therefore, he prayed to determine the maintainability and those issues are to be decided before executing the decree.

Therefore they are entitled to proceed with application under Section 47 of CPC.

6. On a perusal of the earlier order passed in the revision proceedings in respect of the limitation issues in CRP.No.4493 of 2014, this Court elaborately discussed. On hearing both side parties and finally held that the petition was filed in time, accordingly CRP was dismissed on merits and the same was confirmed in SLP proceedings in Special Leave to appeal (c) No(s).22142/2015. In respect of issuance of notice under Order XXI Rule 22 was raised in the said CRP has also been considered and also direction given to the executing Court to decide within a time frame manner. Therefore, the issuance of Order XXI rule 22 has already decided by this Court as rightly pointed out by the counsel for the petitioner the S.A.Nos.1271 of 1984 and 1623 / 1984 were filed between the original plaintiff / Radha and the legal heirs of Muthulakshmiammal and the father of this petitioner / Avinasiappan. Wherein the said appeals were dismissed by confirming the judgement and decree of the Courts below. Accordingly, original suit O.S.No.8 of 1981 and A.S.No.201 of 1983 were ended in favour of the original plaintiff / Radha was confirmed. Therefore, against the Second Appeal proceedings there is no SLP



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filing before the Hon'ble Supreme Court by the defendants. Hence as on date the findings given in the suit were confirmed and title of the plaintiff was declared as it may be the legal heirs of the 3rd defendant filed E.A.No.24 of 2022 praying the Executing Court to decide the issues which was already decided in the earlier proceedings as such is totally vexatious and abusing the process of law. Admittedly, in the earlier proceedings his father/ Avinasiappan was conducted all the trial and appeal proceedings and after his death the legal heirs followed subsequent proceedings and they were well about the earlier proceedings and order passed by this court. The EA filed by the respondent is totally amount to re-agitation and the same is amount to abusing process of law. Already, in the Second Appeal proceedings the title of the property was reached finality and the same was granted in favour of the plaintiff / decree holder. At this stage of execution of the decree, the present application was filed in order to drag on the proceedings and the same was taken on file. In spite of the objection raised by the decree holder as such is erroneous and it is liable to be strike Off.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs. Execution proceedings in E.A.No.24 of 2022 in E.P.No.45 of 2004 in O.S.No.8 of 1981 on the file of District Munsiff Court, Avinasi, is hereby



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ordered to be struck off.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation:Yes/No

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To

1.The District Munsif Court,
Avinashi.

2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.

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and
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