



C.R.P(MD)No.1847 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1847 of 2022

and

C.M.P(MD).No.8296 of 2022

- 1.Mehaboob Khan @ Amanullah Khan
- 2.Akbar Ali Khan
- 3.Kalanthar Khan
- 4.Sanaullah Khan

... Petitioners

Vs.

- 1.S.Balasubramani
- 2.Jafarullah Khan
- 3.Liyakath Ali Khan
- 4.Abdul Rahim
- 5.The District Collector,
Dindigul District,
Dindigul.

- 6.The Tahsildar,
Dindigul East Taluk,
Dindigul District.

- 7.The Head Surveyor,
Dindigul East Taluk,
Dindigul District.

...Respondents

(No relief is sought against respondents 2 to 7. Therefore, R2 to R7 are given up. Notice may be dispensed with to them)



C.R.P(MD)No.1847 of 2022

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in connection with O.S.No.137 of 2022 on the file of Additional District and Sessions Court, Dindigul and allow the civil revision petition and strike off the plaint.

For Petitioners	: Mr.K.Althaf Sheriff for M/s.Ajmal Associates
For Respondents	: Mr.J.K.Jagaseelan (for R5 to R7) Government Advocate Mr.S.Saravagan Prabhu (for R1) R2 to R4 -Given up

ORDER

This civil revision petition is filed to call for the records in connection with O.S.No.137 of 2022 on the file of Additional District and Sessions Court, Dindigul and to strike off the plaint.

2. The case of the petitioners is that in respect of very same suit schedule property, there was an earlier round of litigation, which ultimately ended up in the Hon'ble Supreme Court of India in Civil Appeal No.2763 of 1977. Before the Hon'ble Supreme Court of India, the plaintiff's father Samikannu Pillai and the predecessors of the petitioners herein have agreed to divide the property into two equal halves and pursuant thereof, a plan by dividing the entire extent into two halves were prepared and consequently, sub-division was also done as



C.R.P(MD)No.1847 of 2022

Survey No.865/2A and separate patta has been issued in respect of the predecessors of the petitioners, namely Babukhan Sahib and Sulaiman Khan in respect of the newly sub-divided Survey No.865/2A. Subsequently, the plaintiff/ Balasubramani claiming through his father Samikannu Pillai once again started litigation when there was a dispute as to the boundary and when that matter came up for consideration on an earlier occasion before the Hon'ble Division Bench of this Court in W.A(MD)No.492 of 2022, this Court had also recorded in paragraph No.7 that once the matter is decided by a judgment of the Hon'ble Supreme Court by an executable consent decree, there cannot be a claim of adverse possession on the mere plea that the decree of the Hon'ble Supreme Court has not been executed. In the teeth of the said finding, the present suit in O.S.No.137 of 2022 is filed for a relief that the plaintiff has perfected title in respect of 14 acres 87 cents in Survey Number.865/2A, which was actually directed to be divided as half and half by way of a consent decree before the Hon'ble Supreme Court of India.

3. The learned counsel for the petitioners taking this Court through the Order of the Honorable Supreme Court of India and the order of the Hon'ble Division Bench would submit that on the face of it the present suit is nothing, but an abuse of process of law.



C.R.P(MD)No.1847 of 2022

4. I have considered the said submissions made by the learned counsel for the petitioners.

5. The first respondent was originally represented by counsel and today the learned counsel submitted that he has returned the papers to the party. The name of the first respondent is also printed in the cause list. In view thereof, this Court proceeded to consider the arguments made by the learned counsel for the petitioners. When the parties entered into compromise and the same is recorded as a compromise decree by the Hon'ble Supreme Court, thereafter, the parties cannot be permitted to resile from the same, unless any ground exists as per Order 23 Rule 3A of Code of Civil Procedure to resile from the compromise. The mere alleged continuation of possession even beyond the date of the decree cannot be a ground to resile from the compromise decree. There cannot be any valid animus for the party to treat the property as his own, even after the decree of the Hon'ble Supreme Court of India, which was not the direction of the Court, but the consent of the plaintiff's father Samikanu Pillai himself. A perusal of the plaint categorically reveals that the plaintiff is not claiming independently, but only through the said Samikannu Pillai. This apart, when the matter came up for consideration on an earlier occasion, a Division Bench of this Court in W.A(MD)No.492 of 2022 held in paragraph No.7 reads



C.R.P(MD)No.1847 of 2022

as follows.

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“.....

7.This Court is of the considered view that it is not appropriate, just and equitable for the appellant to claim title to the entire property by adverse possession on the ground that the judgment of the Hon'ble Supreme Court in Civil Appeal is an executable decree and that the writ petitioner had failed to execute the decree within 12 years as per Article 136. limitation ban remedy but does not extinguish right.”

6. The respondent is also not present before this Court to refute the averments and the contentions made on behalf of the petitioners. For the foregoing reasons, I hold that O.S.No.137 of 2022 is nothing, but an abuse of process of Court to reagitate the self same matter, which ended up by way of a compromise decree before the Hon'ble Supreme Court of India. Accordingly, the Civil Revision Petition is allowed and O.S.No.137 of 2022 is struck off from the file of the learned Additional District and Sessions Judge, Dindigul District. No costs. Consequently, connected Miscellaneous petition is closed.

10.07.2024

NCC:Yes/No



C.R.P(MD)No.1847 of 2022

Index: Yes/No

Rmk

To

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C.R.P(MD)No.1847 of 2022

D.BHARATHA CHAKRAVARTHY, J.

Rmk

C.R.P(MD)No.1847 of 2022

10.07.2024