



C.R.P.(MD)No.1990 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.1990 of 2022
and C.M.P.(MD).No.9132 of 2022

Chellasamy

... Petitioner/Petitioner/
Obstructor/Third Party

Vs.

1.Boominathan

2.Kaliyammal

... Respondents 1 and 2/
Respondents 1 and 2/Petitioners/
Plaintiffs and Decree Holders

3.Subramanian

... Third respondent/
Third Respondent/Respondent
Defendant and Judgment Debtor

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for records and set aside the order, dated 08.09.2022 passed in the application in E.A.No.6 of 2019 in E.P.No.5 of 2013 in O.S.No.61 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Rameswaram.

For Petitioner : Mr.T.R.Jeyapalam

For Respondents : Mr.M.Kannan for R1 & R2
No Appearance for R3



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ORDER

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This revision petition has been filed to set aside the order, dated 08.09.2022 passed in the application in E.A.No.6 of 2019 in E.P.No.5 of 2013 in O.S.No.61 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Rameswaram.

2.The facts in brief:

Suit in O.S.No.61 of 2010 was filed by the respondent Nos.1 and 2 herein namely Boominathan and Kaliasammal against the third respondent herein namely Subramanian before the District Munsif Court, Ramanathapuram, for the relief of permanent injunction, preventing the defendant namely the respondents 1 and 2 herein not to put up any construction in the suit properties and for costs. The suit was decreed as prayed for with costs by the judgment and decree, dated 07.12.2011. Against which there was no appeal or further proceedings. It appears that virtually it is an ex parte judgment. Thereafter, no steps were taken by the respondent to set aside the ex parte decree and judgment and no appeal was filed. Later to execute the decree E.P.No.5 of 2013 was filed by the decree holder, who is the respondents 1 and 2 herein before the trial



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Court. In the Execution Petition, they prayed that the third respondent namely Subramanian must remove the construction made in the property and hand over the vacant possession. In the affidavit filed in support of the petitioner, it has been stated that in spite of specific decree as not to put up any construction, now they want to execute the same by removing the superstructure and for delivery. Pending the further proceedings, since the judgment debtor namely the third respondent herein remained exparte in the execution proceedings also, the Execution Court ordered delivery of property by the order dated 22.01.2014. Now, E.A was filed to set aside the exparte order, that was allowed on payment of cost by the order dated 10.12.2014. Again the matter was posed for enquiry. Again the third respondent did not appear and E.P was allowed. For payment of batta, it was adjourned.

3.Later this impugned E.A.67 of 2017 were preferred by this revision petitioner, stating that the suit property and the adjacent larger extend originally belonged to one Muniyandi Thevar. The Original Survey number is 92/2. Old bimass number is 104, measuring about 7 acre 42 cents. Muniyandi thevar died leaving behind his legal heirs, who



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were issued with patta. Now they are namely revision petitioner and his sister Anjanadevi, entitled to the property. Suppressing the true facts, suit in O.S.No.61 of 2010 was filed and exparte decree has been obtained. When the amin came to the property for taking delivery, they informed him that they put up the house and living there. There is issue with regard to the identification of the property, since no four boundaries are mentioned in the plaint. Ten houses are situated in the suit property, which belongs to the legal heirs of the deceased Muniyandi Thevar. The decree itself is not executable, since only permanent injunction was granted against Subramanian. Now E.P is filed for delivery and removal of construction. So they must be heard in the main petition as obstructor.

4.That was resisted by the decree holder by filing counter, stating that their right and title over the property was confirmed by the Judgment. They have purchased the property as confirmed by the trial Court.

5.By the order dated 08.09.2022, the execution Court dismissed the petition stating that it is not maintainable, not only on facts, but also



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on the legal issue. Against which this revision is preferred by the revision petitioner.

6.Heard both sides.

7.Elaborate submissions were made on either side. A preliminary issue arose at the time of hearing, admittedly, the suit was filed for permanent injunction, simpliciter. It was decreed against the third respondent herein as prayed for with costs. E.P is filed as mentioned above for removal of the superstructure and delivery of the property, which is against the decree. It is not the case of the respondents 1 and 2 to the effect that the third respondent namely Judgment Debtor by violating injunction order put up the superstructure and trespassed into the property. Had it been the case of the respondents 1 and 2, the order of the execution court would not have been called in question. But, here it is not the case. Even in the affidavit filed in support of the execution petition, respondents 1 and 2 has stated that the third respondent was prevented from putting up construction; Now to execute the decree, the superstructure must be removed. In the petition they sought delivery of



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the property. Whether such a petition is maintainable, is the issue raised by the revision petitioner.

8.For which, the learned counsel for the respondent namely 1 and 2 would submit that this revision petitioner has no right to challenge the maintainability of the execution petition, if at all, only the Judgment Debtor can challenge it. Actually this revision petitioner has been put up or instigated by the Judgment Debtor and filed this petition. Judgment Debtor failed in his attempt to set aside the exparte decree and exparte order in the main petition and now set up this revision petitioner. Apart from that he also referring to the suit in O.S.No.100 of 2010 filed by the third respondent against the respondents 1 and 2.

9.That apart he has also referring to the subdivision numbers and as well as the patta issued in favour of the Judgment Debtor and extra facts.

10.Regarding the ownership, title over the property, I am not going to make any discussion at all for the simple reason that this revision can



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be disposed of in view of the above said preliminary point. When the execution petition itself is not inconsonance with the decree passed, it ought not to have been entertained by the Execution Court. An objection was made by the respondents 1 and 2 to the effect that this issue ought not to have been taken at the instance of the revision petitioner. Because according to him, as mentioned above, he was instructed by the Judgment Debtor. But, when this particular fact is brought to the notice of this Court, the power of this Court under Section 115 of the CPC must be exercised. Section 115 of CPC reads as under:

“115. Revision .-

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a)to have exercised a jurisdiction not vested in it by law, or

(b)to have failed to exercise a jurisdiction so vested, or

(c)to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:



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[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.] [Substituted by the Code of Civil Procedure (Amendment) Act, 1999, Section 12, for former proviso (w.e.f. 1.7.2002).]

(2)[The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3)[A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]

Explanation .-In this section, the expression, "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]



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11. So when the illegality in entertaining the execution petition is brought to the notice of this Court, by exercising the power under Section 115 of CPC, I am of the considered view that the execution court has committed the illegality in entertaining the execution petition. On the sole ground the EP filed by the respondents 1 and 2 is ordered to be dismissed, without making any discussion with regard to the maintainability of the obstruction made by the revision petitioner that can be taken at appropriate time and in appropriate proceedings. For that reason also I am not discussing whether obstruction petition under Order 21 Rule 97 CPC is maintainable or not.

12. This civil revision petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed. The E.P.No.5 of 2013, filed by the respondents 1 and 2 stands dismissed.

28.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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- 1.The District Munsif cum Judicial Magistrate Court, Rameswaram.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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