



C.R.P.(MD).No.1500 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.06.2024

DELIVERED ON: 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).No.1500 of 2018
and CMP(MD).No.6534 of 2018**

Muthulakshmi(died)

2.Jeyachandran

3.Prema

4.Viji

5.Balakrishnan

6.Thirumalai Ganeshan ...Petitioners/Respondents

(Petitioners 2 to 6 are brought on record as
legal heirs of the deceased sole petitioner
vide Court order dated 12.12.2023).

Vs

M.Maruthaiveeran (died)

1.Seerangammal

2.M.M.Balasubramaniam



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3.M.Seenivasaperumal

4.M.M.Ammaiyappan

5.Thavamani Nachiyar

...Respondents/Petitioners

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.06.2018 passed in E.P.No.351 of 2004 in RCOP.No.96 of 1988 on the file of the Principal District Munsif Court, Dindigul and allow the present Civil Revision Petition.

For Petitioners :Mr.R.J.Karthick

For R1, R3 to R5 : No appearance

For R2 : Mr.S.Anand Chandrasekar

For M/s.Sarvabhauman Associates

ORDER

The legal heirs of the respondent/tenant in RCOP.No.96 of 1988 are the petitioners herein challenging the order passed in E.P.No.351 of 2004 wherein the Executing Court had allowed the petition seeking delivery of the property.

(A).Facts leading to the filing of this revision petition are as follows:

2.The first respondent (deceased) had filed RCOP.No.96 of 1988



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before the Rent Controller, Dindigul for evicting the revision petitioners herein on the ground of wilful default. The eviction order was passed by the Rent Controller on 05.08.1991. The tenant had filed RCA.No.34 of 1991 before the District Court, Dindigul and the same was dismissed for default on 12.06.2001. Thereafter, the landlord had filed E.P.No.351 of 2004 for taking delivery of the property. In the said Execution Petition, the tenant had filed a counter raising the following issues.

(a)He had entered into an unregistered sale agreement with the landlord on 12.12.1991 and based upon the said agreement, a sale deed has been executed in his favour on 15.02.1995. Therefore, he had become the owner of the property and his possession in the property is not that of a tenant and the execution proceedings are not maintainable.

(b)RCOP was allowed by the Rent Controller on 05.08.1991 and there was no interim order by the Appellate Court and the appeal was also dismissed on 12.06.2001. In such circumstances, the execution proceedings filed on 24.02.2004 is clearly barred by limitation.



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3.The landlord had contended that the tenant had relied upon an unregistered sale agreement and an unregistered sale deed. Therefore, the same cannot be relied upon as if to convey a title in favour of the tenant. He had further contended that the appeal was dismissed for default only on 12.06.2001 and the execution proceedings were filed on 24.02.2004. He had relied upon the judgments of the Hon'ble Supreme Court report in *(2004) 8 SCC 724 (Chandi Prasad and others Vs. Jagdish Prasad and others)*, *(2005) 1 SCC 436 (Shyam Sundar Sarma Vs.Pannalal Jaiswal and others)* and *(2019) 11 SCC 419(Shanthi Vs. T.D.Vishwanathan and another)* to contend that only if the suit or proceedings reaches finality, the period of limitation starts running and hence, the present execution petition is in time. The delivery application has been allowed. Challenging the same, the present revision petition is filed.

(B)Contentions of the counsels for the petitioners and the respondents:

4.The order of eviction having been passed in the Rent Control Petition on 05.08.1991, the execution proceedings filed on 24.02.2004 are clearly barred by limitation. He had further contended that there was no



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interim order operating as against the execution of the decree when the appeal was pending between 1991 to 2001.

5.The learned counsel had relied upon a judgement of the Hon'ble Supreme Court reported in **(2001) 1 SCC 469 (Ratansingh Vs. Vijaysingh and others)** to impress upon the Court that when the order of eviction was not disturbed by the First Appellate Court and there was no interim order pending appeal, the period of limitation had expired. He had also relied upon a judgment of the Hon'ble Supreme Court reported in **(2012) 3 SCC 548 (Bimal Kumar and another Vs. Shakuntala Debi and others)** to contend that when there are no interim order by the Appellate Court, the decree holder was entitled to execute the decree from the date of the decree and he cannot take advantage of the pendency of the appeal or revision. The petitioner had further relied upon a judgment of the Hon'ble Supreme Court reported in **(2006) 9 SCC 446 (Ram Bachan Rai and others Vs. Ram Udar Rai and others)** to the same effect.

6.Per contra, the learned counsel appearing for the respondents herein brought to the notice of the Court that the judgment in **(2001) 1 SCC 469 (Ratansingh Vs. Vijaysingh and others)** by Two Hon'ble Judges of the Hon'ble Apex Court has been overruled by Three Judges Bench of



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Hon'ble Supreme Court in a judgment reported in **(2005) 1 SCC 436** (*Shyam Sundar Sarma Vs. Pannalal Jaiswal and others*) to the effect that even where an appeal is dismissed for default or barred by limitation, the same should be treated as a decree. He had further relied upon another Three Judges Bench Judgment of the Hon'ble Supreme Court reported in **(2004) 8 SCC 724** (*Chandi Prasad and others Vs. Jagdish Prasad and others*) to contend that the period of 12 years limitation for executing a decree starts only from the date of disposal of the proceedings by a higher forum in view of the Doctrine of merger. In the present case, according to him, the Rent Control Appeal having been dismissed for default on 12.06.2001 and the limitation will run only from the said date and the execution petition filed on 24.02.2004 is well within the time.

7.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

8.As far as the plea of tenant that he had become the owner of the property is concerned, the same is based upon an unregistered sale agreement and unregistered sale deed. The genuineness and validity of



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these two documents are being disputed by the landlord. Admittedly the value of the property is more than Rs.100/- and these documents cannot be relied upon to arrive at any finding that the tenant has become the owner of the property.

9.The Hon'ble Supreme Court in a judgement reported in **(2019) 11 SCC 419(Shanthi Vs. T.D.Vishwanathan and another)** in paragraph Nos. 6 and 7 has held as follows:

“6.It is not in dispute that the execution petition has been filed within time from the date of the judgment of the High Court. The High Court dismissed the second appeal on 30.12.2003. The execution petition was filed in July 2006. Thus, undisputedly, the execution petition was within the period of limitation from the date of the judgment of the High Court.

7. The aforementioned question raised by the learned advocate for the appellant is no more res-integra, inasmuch as the very question is decided by a Three Judge Bench of this Court, in the case of Chandi Prasad v. Jagdish Prasad, wherein it was observed that in terms of Article 136 Limitation Act 1963, a decree can be executed when it becomes enforceable. A decree is defined in Section 2(2) CPC, 1908 to mean the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the



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suit and may be either preliminary or final. A decree within the meaning of Section 2(2) of the CPC would be enforceable irrespective of whether it is passed by the Trial Court, the First Appellate Court or the Second Appellate Court. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.”

10.While interpreting Article 136 of Limitation Act, the Hon'ble Supreme Court has held that the limitation period starts only from the date of passing of the decree by the final Appellate Court in view of Doctrine of merger. The Hon'ble Supreme Court had further held that the doctrine of merger does not make any distinction between an order of reversal, modification or an order of confirmation passed by the Appellate Authority.



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11.In view of the above said judgment of the Three Judges Bench of Hon'ble Supreme Court, it is clear that the limitation period had started only on 12.06.2001 when the Rent Control Appeal came to be dismissed for default. Therefore, the execution proceedings initiated on 24.02.2004 is well within the time.

12.In the result, there are no merits in the revision petition and this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2024

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

- 1.The Principal District Munsif, Dindigul
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in

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