



C.R.P(MD).Nos.1874 and 2133 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	08.08.2024
Pronounced on	:	26.11.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).Nos.1874 and 2133 of 2019

and

C.M.P(MD).Nos.9583 and 11192 of 2019

C.R.P.(MD).No.1874 of 2019:

S.V.Anand

... Petitioner

Vs.

1. Maadhusri Akkabai Amman Chathiram,
Represented by its Hereditary Trustee,
VRY, Anandhakumar.

Amsammal (Died)

2. Manoharan @ Ayyamperumal

3. Sankar

4. Srinivasan

5. Maharani

... Respondents



C.R.P(MD).Nos.1874 and 2133 of 2019

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of rejection dated 01.07.2019 passed in CFR No.1317 of 2019 in EP No.11 of 2015 in OS No. 228 of 1977 by learned District Munsif, Pattukottai and thereby allow the above Civil Revision Petition and consequently direct the learned District Munsif Court to take the application on file and number the same and adjudicate the same under Order XXI Rule 101 of CPC.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.Niranjan. S.Kumar, for R1

: No appearance for R2 to R5

C.R.P.(MD).No.2133 of 2019:

Muthaiyah

... Petitioner

Vs.

1. Madhusri Akkabai Ammani Chathram Charities,
Represented by its Hereditary Trustee,
VRV, Anandhakumar.

Ramadoss Paththar (Died)

2. Thiyagarajan

3. Shanmugadoss

4. Pakkirisamy

... Respondents



PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the return of the execution application filed under Order XXI Rule 97 by its order dated 13.11.2019 in CFR No.3428 of 2019 in E.P.No.47 of 2010 in O.S.No.309 of 1977 and thereby allow the above Civil Revision Petition and consequently direct the Learned District Munsif Court, Pattukkottai to take the application on file and number the same and adjudicate the same Under Order XXI Rule 101 of CPC.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.Niranjan. S.Kumar, for R1

COMMON ORDER

The revision petitioners are alienee's alienee. Their vendor purchased the property of respondent trust during the pendency of the ejectment suit initiated by the trust in O.S.No.309 of 1977. The respondent's trust has filed the suit for ejectment and recovery of possession from the tenant of the trust. The said tenant during the pendency of the suit sold the properties to the 3rd parties. From the 3rd parties the vendor of the petitioner purchased the properties. On the basis of the decree, the respondent trust have filed the execution proceedings. In the said execution proceedings, the bailiff was appointed to take the possession. At the time, the petitioner came



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to know about the filing of the suit and exparte decree obtained against their vendor's vendor. Therefore, they have filed the objection petition under Order 21 Rule 97 of C.P.C., and the same was dismissed without numbering in C.F.R.No. 1317 of 2019. The said dismissal orders have been challenged before this court in the present C.R.Ps.

2. According to the learned counsel for the petitioners, the respondent trust has no title to the suit schedule property. The respondent trust have filed the suit in O.S.No. 228 of 1977 and obtained the exparte decree only in the year 2003 and they have also filed the execution petition belatedly in the year 2014 i.e., after 11 years from the date of decree. In the interregnum period, the petitioners constructed the house and settled in the land. The learned counsel further elaborated his argument by placing reliance of the various precedents that “*any person*” under order 21 rule 97 of C.P.C. includes the purchaser and hence their application is legally maintainable. Therefore their application ought to have been entertained by the execution court and decided their case of title. The learned counsel placed the following precedents:-

2.1. (a) in the case of Akkaloi Ammani Chatram Vs. State of Tamil



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Nadu and others reported in AIR 1980 Madras 149

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b) In the case of Silverline Forum Pvt Ltd vs. Rajiv Trust and another reported in (1998) 3 SCC 723

c) In the case of Kishan Lal Barwa Vs. sharda Saharan and another reported in 2015 SCC Online All 4980

d) In the case of Shamsheer Singh and another Vs. Lieutenant Colonel Nahar Singh (Dead) through Lrs and others reported in (2019) 17 SCC 279

e) In the case of Asgar and others vs Mohan Varma and others reported in (2020) 16 SCC 230

f) In the case of Jini Dhabrajgir and another vs. Shibu Mathew and another reported in 2023 SCC Online 643

g) In the case of T.G.Ahok Kumar Vs. Govindammal and another reported in (2010) 14 SCC 370

h) In the case of Har Vilas Vs Mahendra Nath and another reported in (2011) 15 SCC 377

i) In the case of Sameer Singh and another Vs. Abdul Rab and others reported in (2015) 1 SCC 379

j) In the case of Brahmdeo Chaudhary vs Rishikesh Prasad Jaiswal and another reported in (1997) 3 SCC 694



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3. The learned counsel for the respondent would submit that the title of trust was already decided in the suit in O.S.No.228 of 1977 on the basis of the title deed of the trust. Even though it is an *exparte* decree, the said decree is binding on the “*pendente lite*” purchaser. He has no authority to dispute the title of the trust. The application filed by the petitioner under order 21 Rule 97 of C.P.C. is not applicable to the person. He was also not *bonafide* purchaser and hence the learned trial judge correctly dismissed the application. He also placed the following precedents to substantiate his contention.

4. This court considered the rival submissions made by the learned counsel appearing on either side and perused the entire record and also the precedents relied by them.

5. The following questions arise in this case :-

5.1. Whether the petitioner has a right to make the application under Order 21 Rule 97 of C.P.C.



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5.2. Whether the petitioner's claim before this court to decide his objection to the execution of the trust property can be entertained under 21 Rule 101 of C.P.C.

5.3. Whether the petitioner's submission that the trust has no title to the suit schedule property is to be accepted.

6. Discussion on the title of the respondent trust:-

6.1. In O.S.No. 232 of 1977 and the other 32 suits, the competent civil court namely District Munsif Court, Pattukottai, the title of the trust had been decided in their favour. In the said group of cases, the learned trial judge decided the issues after considering the entire documents and apart from the reliance placed by the various documents filed by the revision petitioner before this court. Apart from that the present decree in O.S.No. 228 of 1977 was decided on the similar line. The petitioner is said to have purchased the property from the vendor's vendor of the judgment debtor in the year 2012. As held by the Hon'ble Supreme Court in the judgment reported in the case of *Usha Sinha Vs Dina Ram and others* reported in **2008 (7) SCC 144** he has no right to dispute the entitlement of the decree of



the trust. He is “*pendente lite*” purchaser that too after the filing of the execution proceedings. Virtually, he purchased the dead title property. He is alienee’s alienee and he has no right to plead equity. Therefore, the contention of the petitioner that the trust has no right cannot be accepted.

6.2. The next contention of the petitioner that his application is maintainable under Order 21 Rule 97 of C.P.C. is misconceived one. From the reading of the order 21 rule 97 of C.P.C., it is clear that “*the holder of a decree for possession of immovable property or the purchaser of any such property sold in execution of decree is alone entitled to make application to the execution court complaining the such resistance or obstruction by any person*”. Here the petitioners have not the purchased the property from the decree holder. Therefore, their application under order 21 Rule 97 of C.P.C. is not maintainable. Therefore the learned judge correctly returned the same and this court finds no infirmity in returning the application raising the question of maintainability.

6.3. The next contention of the learned counsel for petitioner before this court by way of additional prayer that his application has to be decided



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under Order 21 Rule 101 of C.P.C. is also misconceived one. Rule 101 of C.P.C. confers the jurisdiction upon the execution court to decide the application either under rule 97 or Rule 99 of C.P.C. As held above the petitioner's applications are not maintainable under 97 of C.P.C. The petitioner is not dispossessed by the decree holder. Therefore, he has no right to seek the shelter under rule 101 of C.P.C. Therefore, his contention before this court he adjudicate the petitioner's case under Rule 101 of C.P.C. also cannot be entertained.

6.4.The petitioner purchased the property during the pendency of the execution of the decree that too in the year 2012 much after the decree passed in the year 2003. He has not purchased the property directly from the judgment debtor. He purchased the property from the vendor's vendor of the judgment debtor. Therefore in view of the specific bar under order 21 rule 102 of C.P.C. he has no authority to raise the resistance to the decree obtained by the trust. In this aspect it is appropriate on the part of this court to place the following reliance of the Supreme Court:-



6.5.This Court dwells upon the following precedents relied by the learned counsel for the petitioner:

<i>Sl.No</i>	<i>Decisions</i>	<i>Parties Name</i>
1	1998 (3) SCC 723	Silverline Forum Pvt Ltd Vs. Rajiv Trust and another
2	2015 SCC Online A11 4980	Kishan Lal Barwa Vs Sharda Saharan and another
3	2019 (17) SCC 279	Shamsher Singh and another Vs Lieutenant Colonel Nahar Singh (dead) through Lrs and others
4	2020 (16) SCC 230	Asgar and others Vs. Mohan Varma and others
5	2023 SCC Online 643	Jini Dhanrajgir and another Vs Shibu Mathew and another

Allowing the mighty person to purchase the property at the execution stage and allow him to resist the execution amounts to recognising “ Rule by might”. Further, accepting the plea of the such persons amounts to thwarting of the civil justice delivery system against which the public are losing faith.

6.5.1. The facts of the “*Silverline Forum Pvt Ltd vs. Rajiv Trust and another*” is not similar to the facts of the case. In the said case, whether the sub tenant has right to defend the dispossession as per the West Bengal Premises Tenancy Act, 1956 had arisen. In this case, the lower Court has



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not correctly entertained the application filed by the transferring pendente lite from the legal heirs of the judgment debtor in view of the specific bar under Order 21 Rule 102 of C.P.C. Paragraph No.10 of the said judgment also emphasised the said principle.

6.5.2. Similarly, in 2019 (17) SCC 279, 2020 (16) SCC 230 and 2023 SCC Online 643 the person in occupation prior to the decree has raised objection and they all pleaded collusive nature of decree. Therefore, the said case laws have no application to the present case.

6.5.3. On the other hand, the precedents relied by the respondent counsel is applicable to the precedents have all dealt with the case of the pendente lite purchaser from the original judgment debtor or legal heirs of the said judgment debtor. In the said precedents, it has been held that the pendente lite purchaser has not locus either under Order 21 Rule 97 of C.P.C., or under Order 21 Rule 101 of C.P.C. In view of the specific bar under Order 21 Rule 102 of C.P.C.



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7. In view of the above discussion, this Court finds no merit in both the Civil Revision petitions and hence this court inclines to dismiss the both Civil Revision petition.

8. Accordingly, the Civil Revision Petitions are dismissed. Consequently, connected Civil Miscellaneous Petitions are closed.

26.11.2024

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

To

1. District Munsif Court,
Pattukkottai, Thanjavur District.
2. The Section Officer,
VR Section(Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

sbm

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