



C.R.P(MD)No.1737 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1737 of 2017

and

CMP(MD)No.9426 of 2017

1.R.Somanathan & Co.,
Through its Parners,
R.V.Ramasubramanian and
R.V.Shankaran,

2.S.D.R.Vijayaseelan ... Petitioners / Plaintiffs

Vs

P.Sankaran (Died)

2.Vasanth

3.Durai Sankar

4.Sivasankaran

5.Kannan

6.Muthulakshmi

7.Selvi

R2 to R7 are brought on record as
LRs of the deceased sole respondent
vide Court order dated 30.01.2024.

... Respondent / Defendant



C.R.P(MD)No.1737 of 2017

Prayer : This Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 21.09.2017 passed in E.A.No.248 of 2014 in E.P.No.65 of 2005 in O.S.No.400 of 1974 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.M.P.Senthil

For R2 to R7 : Mr.R.Manoj Kumar

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 21.09.2017 passed in E.A.No.248 of 2014 in E.P.No.65 of 2005 in O.S.No.400 of 1974 on the file of the Principal District Munsif Court, Thoothukudi.

2. The facts in brief is that the suit is of the year 1974. Several round of proceedings between the parties, went on touching the issue. Repeated revisions and repeated SLPs were preferred by the parties and finally the Hon'ble Supreme Court in Civil Appeal Nos.7865-7866/2019, concluded the matter once for all by making an elaborate discussion over the history of the dispute and the merits of the matter.



C.R.P(MD)No.1737 of 2017

3. This revision is preferred against the order passed by the Execution Court in E.A.No.248 of 2014. That application was taken out by the deceased Sankaran, stating that the property measuring about East - West 16.3 feet, North-Suth 58 1/2 feet, totally 955.18 sq.ft was sold in his favour and as per the order in I.A.No.1241 of 1974, dated 18.07.2001, he deposited the sale consideration. But the respondent namely Somanathan and Vijayaseelan did not comply the order and executed the sale deed. E.P.No.65 of 2005 was filed. C.R.P(MD)No.1092 of 2006 and C.R.P(MD)No.2423 of 2008 were preferred and pending the proceedings, the first respondent namely Somanathan sold the property to the second respondent which lies on the North, measuring about 11 feet. In pursuance of the above said illegal sale transaction, Vijayaseelan / second respondent in the main petition locked the south portion. With this averments, he wanted to remove the lock and put him in possession. That was resisted by the revision petitioner herein by filing counter. At the conclusion of the enquiry process, the execution Court, directed the revision petitioner and others, to break open the lock and hand over the possession to the respondent. Against which this Civil Revision Petition is preferred.



WEB COPY

4. To answer the issue, now we will go to the order of the Hon'ble Supreme Court in the above said matter. Since history of the dispute and the details of the property were already discussed by the Hon'ble Supreme Court of India, I need not repeat the same in a extensive manner. It is suffice to reproduce the following observations :

In view of the discussion aforesaid, we are of the view that the dispute lies within a very narrow compass despite such elaborate facts and past history. The issue is can the Execution Court go beyond the decree which has become final. Insofar as the proceedings for eviction are concerned, in view of the option available to the respondent as tenant under Section 9 of the said Act, that option was exercised. Consequently, instead of the decree for eviction, what followed was a decree for transfer of the land in favour of the respondent as a tenant on the amount being determined as payable to the appellant. The endeavour of the respondent to expand the area of land beyond the scope of the original application did not succeed when the application for amendment was rejected and that order has become final by order dated 07.11.1975. Despite this, orders were passed at the final stage for a larger area of land



C.R.P(MD)No.1737 of 2017

but the decree drawn up was as per the application which had been permitted to be prosecuted under section 9 of the Act and the area specified therein. Even that did not put an end to the controversy despite the matter going on back and forth and the aspect of the land from which eviction could be sought being confined to 47 ft by 15 ft.

The execution Petition filed once again sought to expand the area to 57 by 15 ft. What we label as a possible misadventure was the endeavour of the appellant to seek amendment of the execution petition, which did not really lay in the hands of the appellant. The appellant was only required to file the objections insofar as the area to be transferred was concerned for which the sale deed had to be executed. Thus, in the revision Petition filed by the respondent vide order dated 22.05.2014 the same was allowed.

Faced with this situation, the appellant moved this Court which dismissed the the SLP but with [6:09 PM, 11/26/2024] Navanayaki: clarification extracted aforesaid. The problem also seems to have been a little aggravated by the fact that pending SLP, the execution petition came to be decided.

The High Court, in our view, should have taken note of the order of this Court dated 14.03.2016 and



C.R.P(MD)No.1737 of 2017

keeping in mind the basic principle of the executing Court not going beyond the decree and the respondent's application to expand the area to be transferred to him having been rejected in the main proceedings, the sale deed was required to be executed and registered by the appellant only insofar as the decree was passed for 47 ft by 15 ft.

We put to learned counsel for the appellant as to whether the cause for further litigation is only a small strip of land which would arise but then he explained that there is an adjacent land of the appellant to the very same land and the access to this is affected on account of this extra area being held entitled to be transferred to the respondent.

We are thus, constrained to allow the appeal and restrict the execution of the sale deed in the execution petition to the area of 47 ft by 15 ft alone.

We are informed, at this stage, that that the sale deed already stands executed.

Thus, a rectification deed would have to be executed in terms of our order passed today, by the Executing Court.

The appeals are allowed in the aforesaid terms, leaving parties to bear their own costs.



C.R.P(MD)No.1737 of 2017

5. In view of the observation and the order of the Hon'ble Supreme Court of India, the subject matter of E.A.No.248 of 2014 itself has now become in unenforceable, since there is a clear direction by the Hon'ble Supreme Court to rectify the sale deed in favour of the respondent, in the light of the above said finding. Such being the order, the order passed by the execution Court in E.A.No.248 of 2014 is liable to be set aside.

6. Accordingly, the order dated 21.09.2017 passed in E.A.No.248 of 2014 in E.P.No.65 of 2005 in O.S.No.400 of 1974 by the Principal District Munsif Court, Thoothukudi, is set aside and there shall be a direction to the execution Court to comply the direction order passed by the Hon'ble Supreme Court in Cil Appeal Nos.7865 - 7866 / 2019.

7. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

21.11.2024

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



WEB COPY



C.R.P(MD)No.1737 of 2017

G.ILANGO VAN, J.

pnn

To

- 1.The Principal District Munsif Court, Thoothukudi.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD)No.1737 of 2017
and
CMP(MD)No.9426 of 2017

21.11.2024