



C.R.P(MD)Nos.1985, 2477 and 2478 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)Nos.1985, 2477 and 2478 of 2017

and

C.M.P(MD)Nos.10015, 11712 and 11713 of 2017

and

C.M.P(MD)No.4255 and 4256 of 2019

C.R.P(MD)No.1985 of 2017

L.Suresh

... Petitioner / Appellant
Additional 9th respondent

Vs

1.Raja (Died)

2.Chandra

3.Sahayam

4.John Milton

5.Valarmathi

6.Sudha

7.Namasivayam

8.Manigandhi

... Respondents / Additional 2nd Plaintiff /
Additional Respondents 2 to 8

9.R.Rajesh

10.R.Raskin

1/16



C.R.P(MD)Nos.1985, 2477 and 2478 of 2017

11. Anthony Arulrajathi

... 9 to 11 Respondents

(R9 to R11 are brought on record as legal representatives of the deceased R1 vide Court order dated 12.04.2024)

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 12.07.2017 passed in E.A.No.62 of 2017 in E.P.No.78 of 2012 in O.S.No.319 of 1982 on the file of Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For R9 to R11 : Mr.R.Devaraj

For R4 : Mr.T.Arul

C.R.P(MD)No.2477 of 2017 :

M.John Milton

... Petitioner / 4th Respondent
in C.R.P(MD)No.2477 of 2017

Vs

1.Raja (Died)

2.Chandra

3.Sahayam

4.Valarmathi

5.Sudha

6.Namasivayam

7.Manigandhi

8.Suresh

... Respondents / Additional 2nd Plaintiff /
Additional Respondents 2 to 8

2/16



C.R.P(MD)Nos.1985, 2477 and 2478 of 2017

9.R.Rajesh

10.R.Raskin

11.Rajathi

... 9 to 11 Respondents

(R9 to R11 are brought on record as legal representatives of the deceased R1 vide Court order dated 12.04.2024)

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in E.A.No.153 of 2017 in E.P.No.78 of 2012 in O.S.No.319 of 1982 on the file of the Principal District Munsif, Nagercoil, dated 07.11.2017 and allow this Civil Revision Petition.

For Petitioner : Mr.T.Arul

For R5 to R8 : Mr.M.P.Senthil

For R9 to R11 : Mr.R.Devaraj

C.R.P(MD)No.2478 of 2017 :

M.John Milton

... Petitioner / 4th Respondent
in C.R.P(MD)No.2477 of 2017

Vs

1.Raja (Died)

2.Chandra

3.Sahayam

4.Valarmathi

3/16



C.R.P(MD)Nos.1985, 2477 and 2478 of 2017

5.Sudha

6.Namasivayam

7.Manigandhi

8.Suresh

... Respondents / Respondents

9.R.Rajesh

10.R.Raskin

11.Rajathi

... 9 to 11 Respondents

(R9 to R11 are brought on record as legal
representatives of the deceased R1
vide Court order dated 12.04.2024)

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order passed in E.A.No.153 of 2017 in E.P.No.78 of 2012 in O.S.No.319 of 1982 on the file of the Principal District Munsif, Nagercoil, dated 10.11.2017 and direct the learned Principal District Munsif, Nagercoil, to accept the witness schedule filed along with the Execution Application and memo of draft issued dated 08.11.2017.

For Petitioner : Mr.T.Arul

For R5 to R8 : Mr.M.P.Senthil

For R9 to R11 : Mr.R.Devaraj



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COMMON ORDER

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(i) C.R.P(MD)No.1985 of 2017 is filed against the order of dismissal passed by the Execution Court in E.A.No.62 of 2017 dated 12.07.2017 in E.P.No.78 of 2012 in O.S.No.319 of 1982.

(ii) C.R.P(MD)No.2477 of 2017 is filed against the record of proceedings dated 07.11.2017 in E.A.No.153 of 2017, in E.P.No.78 of 2012 in O.S.No.319 of 1982.

(iii) C.R.P(MD)No.2478 of 2017 is filed against the record of proceedings dated 10.11.2017 in E.A.No.153 of 2017 in E.P.No.78 of 2012 in O.S.No.319 of 1982 on the file of the Principal District Munsif, Nagercoil, dated 10.11.2017.

(iv) All the matters are heard in common and a common order is passed to avoid unnecessary confusions.

2. The facts in brief is that, originally the suit in O.S.No.319 of 2019 was filed by one P.Lakshmanan against one Mani @ Antony Pitchai. That suit was decreed by the judgment decree dated 13.10.1987, when both the Lakshmanan and Mani @ Antony Pitchai were alive. To execute the decree, E.P.No.32 of 1988 was filed by the Lakshmanan.



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That was dismissed for default on 19.08.2004. He died later. That application was dismissed due to the non production of order passed by the High Court. By mistake, in that application itself, one Raja was shown as the second petitioner stating that Lakshmanan sold the property to Raja. Since the earlier petition in E.P.No.32 of 1988 was dismissed for default, no step was taken by the deceased Lakshmanan till his life time. After that the present E.P.No.78 of 2012 was taken out by Raja by showing Lakshmanan as first petitioner.

3. Since the judgment debtor namely Mani @ Antony Pitchai is dead, the legal representatives were brought on record one by one which were not very much concerned for deciding the issue now.

4. Pending E.P.No.78 of 2012, several proceedings were initiated by the parties. One among them is E.A.No.62 of 2017, taken out by 9th respondent stating that Raja who alleged to have purchased the property from Lakshmanan, without complying Order 21 Rule 16 of C.P.C., by not sending notice and without his knowledge has filed the E.P. proceedings on the suit filed by his father. So the E.P. proceedings itself is not maintainable.



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5. After hearing both sides, the Execution Court by order dated 12.07.2017, has observed that even during the pendency of E.P.No.32 of 1988, Raja was shown as the second petitioner. So in the presence of Lakshmanan, Raja was shown as second petitioner, so there is no necessity for once again issue notice to the decree holder for putting the decree in execution. By observing so, the E.A.No.62 of 2017 filed by 9th respondent who is the revision petitioner herein, is dismissed. Against which C.R.P.(MD)No.1985 of 2017 is filed.

6. Another round of proceedings were initiated by John Milton who is the one of the legal representatives of judgment debtor, who is shown as 4th respondent by filing E.A.No.153 of 2017. E.A.No.153 of 2017 is filed under Section 47(1) and Section 151 of CPC, to dismiss E.P.No.78 of 2012, on various grounds which were not very much concerned here. Pending the enquiry process, by the record of proceedings dated 03.11.2017, the following order was passed:

"Though the defence of identity of the E.P. property, taken by the petitioner, was negatived by this Court and the High Court, since the petitioner pleads limitation as one of the grounds, for the same, the petition is taken into file."



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Against that record of proceedings, this C.R.P(MD)No.2477 of 2017, is filed. But ofcourse, in the prayer portion, the date of order is wrongly mentioned as 07.11.2017, but actually the date of order is 03.11.2017, which was admitted by both side counsels after verifying the records today. The revision petitioner filed list of witnesses and drafts issue. That came to be returned by the execution Court by order dated 10.11.2017. Against which C.R.P.(MD)No.2477 of 2017 is filed.

7. Heard both sides. Now we will take up C.R.P(MD)No.1985 of 2017, first for consideration.

8. Learned counsel for the revision petitioner would draw the attention of this Court to Order 21 Rule 16 which reads as under:

" 16.Application for execution by transferee of decree - Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree - holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:



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Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objection (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

9. Learned counsel for the petitioner would submit that without knowledge of his father he was shown as first petitioner and even notice was not issued either to Lakshmanan before adding or showing him as first petitioner or the legal representatives namely the revision petitioner and others, after the death.

10. Per contra, learned counsel for the petitioners in the execution proceedings, would rely upon the judgment of the Hon'ble Supreme Court reported in **(1979) AIR (SC) 1066** in the case of **Zila Singh and others Vs Hazari and others**, where in it has been held that a purchase can very well maintain the execution petition by virtue of Section 146 of CPC, he need not comply Order 21 Rule 16 of CPC.



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11. After hearing this arguments and reply argument advanced by the revision petitioner counsel it is made clear that it is not a case of assignment, but a case of transfer. The execution petitioner himself clarified this position. But as stated above the execution petitioner has stated that he purchased the property which is under dispute, from the original decree holder. For all practical purposes, the petition can be deemed a petition under Section 146 of C.P.C. which is maintainable. But as pointed out by the revision petitioner, the problem lie in showing Lakshmanan as the first petitioner without any vakalat being filed.

12. Learned counsel for the execution petitioner would submit that it may be a mistake. But we find answer for this issue from the order passed by the execution Court, wherein it has been stated that as mentioned above, E.P.No.32 of 1988 was filed by showing this Raja as second petitioner. Perhaps the very same cause title has been taken by Raja in this petition also. It is nothing but an curable rrectable defect which can be done in any point of time. This will not affect the maintainability of the execution petition. So the order passed by the



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execution Court dated 12.07.2017 in E.A.No.62 of 2017 is perfectly legal but ofcourse with the above said observation, that this is a curable defect. CRP(MD)No.1985 of 2017 is liable to be dismissed. Accordingly, dismissed.

13. Now coming to the other two CRPs, first we will take up the order dated 03.11.2007. At the time of numbering the petition, the execution Court has stated that with regard to the identity of the property, the matter was already decided. So it cannot be taken up once again.

14. With regard to this aspect, learned counsel for the revision petitioner would submit that the property purchased by Raja is entirely different from the one which is the subject matter of the decree; Under the guise of executing the decree, Raja wants to take possession of the property which lies adjacent wherein standing trees are there for which he is paying penalty to the Government; So the identity of the property must be resolved.



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15. Per contra, learned counsel for the execution petitioner by filing dates and events, would submit that this is a second attempt made by the revision petitioner to stall the execution proceedings by one way or the other. He was submitting that the suit in O.S.No.508 of 1990 was filed by one of the legal representatives of Antony Pitchai namely Chandra for permanent injunction in respect of new S.No.9/46. In that suit, in I.A.No.469 of 1990, E.P., proceedings in E.P.No.32 of 1988 was stayed. That suit was dismissed on 31.03.2000. Appeal filed in A.S.No. 24/2000 was dismissed by order dated 28.02.2001. S.A.No.945 of 2001 was preferred and the same was also dismissed on 20.06.2011. Before that E.A.No.147/1999 was again filed by Chandran and others, under Section 47 of C.P.C., in E.P.No.32 of 1988. As mentioned above E.P.No.32 of 1988 was dismissed for default by mistake. E.A.No.147 of 1999 was dismissed on 22.06.2001. Against which C.R.P.No.2758 of 2001 was preferred that was heard along with S.A.No.945 of 2001. As mentioned above it was also dismissed. Another attempt is made by filing suit in O.S.No.26 of 2013 on the file of Subordinate Court, Nagercoil, by Sudha and others for partition and that also came to be dismissed on 02.08.2019.



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16. So in short, learned counsel for the execution petitioner would submit that in spite of the fact that the suit was decreed on 13.10.1987, still it could not be executed even after a lapse of 37 years. The agony, the time and cost spent by the execution petitioner is understandable. But when a specific issue with regard to the identity of the property purchased by Raja in the subject matter of the execution proceedings is taken, it must be enquired to its logical conclusion. But the presumptive order passed by the execution Court, may not be proper. So that issue is also left open, to be taken up by the execution Court.

17. Similarly, rejecting the witness schedule may also be not proper. The parties may be given full opportunity to put forth their case. For the simple reason that rejecting a petition in part and rejecting the witness schedule is not permissible under law, the orders are not legal and proper.

18. When the identity of the property purchased by the execution petitioner is disputed, as pointed out by the learned counsel for the



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revision petitioner, that may be taken care by the execution Court because execution Court cannot go beyond the description of the property mentioned in the decree.

19. Considering the oldness of the matter, let the execution process itself be completed within three months including the present E.A.No. 153 of 2017. To that extent, the order passed by the execution Court is modified.

20. Accordingly, C.R.P(MD)No.1985 of 2017 is dismissed, C.R.P(MD)Nos.2477 and 2478 of 2017 are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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

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To

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



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G.ILANGO VAN, J.

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ORDER
IN

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