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C.R.P.(NPD) No.6 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.6 of 2025
and C.M.P.No.35 of 2025

Suresh ... Petitioner/8th Respondent/8th Respondent /3rd Party

-VS-

1. Kannaki ... 1st Respondent/2nd Petitioner/2nd Petitioner/3rd Party
2. Rajasekaran ... 2nd Respondent/2nd Respondent/R2/3rd Party
3. Kanagam
4. Dharani
5. Rathinammal
6. Ramesh ... R3 to R6/Respondents-R4, R5, R7 & R9/3rd Party

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 18.11.2024 made in E.A.No.115 of 2017 in E.P.No.121 of 2017 in O.S.No.84 of 1996 on the file of the Principal Sub Court, Kallakurichi.

For Petitioner : Mr.R.Nandha Kumar
For R1 : Mr.R.Bharath Kumar

ORDER

Challenging the order of the Executing Court ordering delivery,
the present Civil Revision Petition has been filed.

Brief background of the case in nutshell:



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2. One Narayanan had filed a suit in O.S.No.84 of 1993 for declaration and delivery of possession as early as on 12.03.1993 against one Selvaraj, whose son is the revision petitioner herein. The said suit was dismissed by the Trial Court on 12.12.1996 and in Appeal in A.S.No.10 of 1997, the suit was decreed in its entirety on 23.07.1997. Challenging the findings rendered in the First Appeal, a Second Appeal in S.A.No.1276 of 1997 came to be filed, in which, the decree and judgment of the First Appellate Court was confirmed. The Cross Appeal filed by the respondents claiming means profits was also dismissed. Challenging the judgment passed in the Second Appeal, the SLP filed in Civil Appeal No.2312 of 2011 was also dismissed and thus, the litigation reached its finality.

3. During pendency of the Second Appeal, the 1st respondent herein had purchased the suit property and she had also filed C.M.P.No.20416 of 2004 in S.A.No.1276 of 1997, seeking to implead her as one of the necessary parties in the Second Appeal. This Court, by order dated 11.03.2005 had dismissed the said petition on the ground that *pendens* purchaser cannot have any right to implead herself. Thereafter, it



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appears that an Execution Petition was originally filed by the Decree Holder in E.P.No.121 of 2017, which was pursued by the subsequent purchaser, namely, Kannagi in the capacity as Power Agent and therefore, the said Execution Petition was closed. Subsequently, another application in E.A.No.115 of 2017 came to be filed to reopen E.P.No.121 of 2017 and yet another application in E.A.No.96 of 2019 had also been filed by Kannagi to implead her in the Execution Petition, which was allowed by the Executing Court on 12.09.2022.

4. The order impleading Kannagi as a party in the Execution Petition was questioned before this Court in C.R.P.No.742 of 2023, in which this Court directed the respondents therein to produce the sale deed before the Executing Court, with further direction to proceed with the enquiry in the Execution Petition. After that order, delivery has been effected, challenging which, the present petition has been filed.

5. Learned counsel for the petitioner submitted that legalheirs of the Decree Holder have not been impleaded and that the date of death of the Decree Holder has not been established and therefore, the order of



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delivery by the Executing Court is not proper. He further submitted that one more suit was filed by the revision petitioner to set aside the decree and judgment and on that ground, he assailed the order of the Trial Court.

6. Heard the learned counsel for the parties and perused the material documents available on record.

7. At the first blush, it is not in dispute that the earlier decree and judgment passed against the revision petitioner had attained finality. The Decree Holder had initially filed an Execution Petition for execution of the decree that was closed and thereafter, it appears that an application in E.A.No.115 of 2017 had been filed to reopen E.P.No.121 of 2017. That apart, another application in E.A.No.96 of 2019 had been taken out by one Kannagi for impleading herself. When there is a devolution of interest during pendency of the suit, the suit may be continued by leave of the Court by the person in whose favour such devolution of interest had taken place.

8. In the case on hand, though the application filed by the 1st



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respondent had been rejected initially by this Court on the ground of lis pendens purchaser, the impleading application filed in the Execution proceedings has been allowed and the finding of the Trial Court had not been set aside by this Court in C.R.P.No.742 of 2023. Once the devolution of interest had already taken place and the rights of the parties had been decided in the suit, the transferee has civil right to proceed further and apply for execution. Section 146 of CPC was introduced with an object to facilitate the exercise of parties by a person under whom right is vested by such devolution or assignment. Needless to state here that when the devolution of interest had taken place during pendency of the suit; that title has been transferred to the transferee and that the right of the party has also been determined in the suit and reached finality, the rights acquired by such transferee can be protected and the person has civil right to apply for execution as per Section 146 of CPC.

9. The explanation to Order XX1 Rule 16 makes it very clear that nothing in this rule shall affect the provisions of Section 146 and a transferee of rights in the property, which is the subject matter of the suit,



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may apply for execution of the decree without a separate assignment of the decree as required under Order XXI Rule 16. When the said provision protects the rights of the transferee, who acquired the title from the vendor in whose favour the title dispute had already reached finality, such rights cannot be deprived merely on the ground that legalheirs of the vendor have not been brought on record.

10. In the result, finding no merits in the present Civil Revision Petition, the same is dismissed and the order dated 18.11.2024 passed in E.A.No.115 of 2017 in E.P.No.121 of 2017 in O.S.No.84 of 1996 by the Principal Sub Court, Kallakurichi is hereby upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2025

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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Note: Issue order copy on 07.01.2025



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To:

The Principal Subordinate Judge,
Kallakurichi.

N.SATHISH KUMAR,J.,



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