
(2005) 01 MAD CK 0097

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 2297 of 2000

Hemanathan and Thangaraj

APPELLANT

Vs

N. Kupuswamy, G. Kothandapani and Sanjeevi Kumar

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Criminal Procedure Code, 1973 (CrPC) — Section 47

Citation : (2005) 1 MLJ 682

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Satish Rajan, for the Appellant; G.V. Srinivasalu, for R1 and 2 and B. Sathishsundar, for R3, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above Civil Revision Petition is directed against the judgment and decree dated 24.2.2000 rendered in E.A. No.

558 of 1995 in E.P. No. 3567 of 1992 in O.S. No. 1643 of 1986 by the Rent Control Appellate Authority (Subordinate Judge) Kumbakonam

thereby confirming the fair and decretal order dated 24.4.1996 made in R.C.O.P. No. 25 of 1990 by the IX Assistant Judge, City Civil Court,

Madras.

2. Tracing the history of the above Civil Revision Petition having come to be filed before this Court, what comes to be known is that the petitioners

herein are the Decree Holders; that the respondents herein, the Judgment Debtors, have filed a petition u/s 47 of the Civil Procedure Code. E.A.

No. 558 of 1995 seeking for restraining the warrant for delivery of possession of the extent of one half of the suit property and to dismiss the

above E.P. with exemplary costs on averments such as that O.S. No. 1643 of 1986 has been filed by the petitioners herein seeking for delivery of

possession of the entire suit property, the House and Premises in Door No. 11, Kolanthai Achari Street, Choolai, Madras - 112; that the above

suit was decreed on 20.9.1990 by the VII Assistant Judge, City Civil Court, Madras; that the appeal preferred by the respondents herein in A.S.

No. 79 of 1991 was dismissed by the V Assistant Judge on 25.3.1992; that against the said decree, they have preferred second appeal and the

same is pending for numbering.

3. The further case of the petitioners is that the suit property was settled by a settlement deed dated 17.1.1960 in favour of one Thiru. Jayaram

Naidu for his life time, thereafter in favour of his grandsons Dheenadayalu and Gurumurthy for their life time with the right of enjoyment and the

property is encumbered with ancestral mortgage debt created by Sanjeevi Naidu; that to clear the debts, Dheenadayalu, executed a mortgage

deed by covering the minor son Sanjeevi Kumar and when the said mortgage deed was not discharged, the said Chokkammal brought the

property in public auction through M/s. Murray & Co., Madras and thereafter the suit filed by the respondents 1 and 2 against one Gurumurthy,

the father of the petitioners herein in O.S. No. 8066 of 1980 was also dismissed, and the second appeal preferred by them in S.A. No. 1066 of

1986 was also dismissed on 16.3.1990; that as per the settlement deed, the said Dheenadayalu is entitled to one half of the property along with his

minor son and hence the respondents 1 and 2 herein are entitled to one half of the property and E.P. is liable to be dismissed.

4. In the counter affidavit the petitioners herein would submit that the petition u/s 47 is not at all maintainable in law or on facts; that there is no

provision to create the funds in the settlement deed and further the respondents purchased the property in public auction conducted by M/s.

Murray & Co., is false; that the auction was held by the Court for delivery of possession in O.S. No. 8066 of 1980 and hence they would pray for

dismissal of the above petition.

5. Based on the above pleadings by the contesting parties, the learned IX Assistant Judge, City Civil Court, Madras having conducted an enquiry

and in appreciation of the materials placed on record, would ultimately allow the

above Execution Application. Aggrieved, the petitioners herein the respondents therein, who are the Decree Holders have come forward to file the above Civil Revision Petition on certain grounds as brought forth in the grounds of Civil Revision Petition.

6. The petitioners, who are the respondents before the Court of IX Assistant Judge, City Civil Court at Chennai are the petitioners in E.P. No.

3567 of 1992 in the suit in O.S. No. 1643 of 1986. E.P. No. 3567 of 1992 has been filed by the revision petitioners herein as Decree holders in

the said suit for execution of the decree, the respondents therein who were defendants 1 and 2 and the Judgment Debtors have filed an application

in E.A. No. 558 of 1995 u/s 47 of CPC, thereby praying to restrain the warrant for delivery of possession to the extent of one half of the suit

property and to dismiss the above Execution Petition with exemplary costs and in the said petition, the Court of IX Assistant Judge, City Civil

Court, Chennai has passed its order dated 24.2.2000 thereby allowing the petition filed by the respondents herein u/s 47 of CPC and the order

passed by the Subordinate Court, in E.A. No. 558 of 1995 which is being testified in the above Civil Revision Petition on grounds such as that the

learned Judge failed to appreciate the facts and circumstances of the case in perspective; that the learned Judge has not given any valid reason for

allowing the application; that there is no explanation in the order as to how the respondents herein substantiated their right in the property in view of

the finding of the Hon"ble High Court in S.A. No. 1066 of 1986 that the sale in pursuance of the mortgage is invalid in law; that the learned Judge

failed to note that as per the Settlement deed borne by Ex A6 the right in the property was conferred only on the plaintiffs; that the learned Judge

failed to note that the plaintiff filed a suit for recovery of possession was decreed which came to be confirmed by both the first appeal and the

second appeal and therefore, the decree is perfectly executable one; that the learned Judge failed to note that already delivery was ordered and

when the petitioner filed an application seeking police protection and to break open the door for handing over the possession , the Judgment

debtors filed the present application as frivolous; on such grounds, the revision petitioner/decreed holders have come forward to file the above Civil

Revision Petition seeking to set aside the erroneous order passed by the lower

Court.

7. On the other hand on the part of the respondents, it would be argued to the effect that one Sanjeevi Naidu the original owner of the property

settled the same by the Settlement Deed dated 17.1.1960 in his life time and thereafter in favour of his grand sons Deenadayalu and Gurumurthy

for their life time; that the property was encumbered with ancestral mortgage created by Sanjeevi Naidu; that to clear the debts, Dheenadayalu,

executed a mortgage deed along with the minor in favour of one Chokkammal and discharging the mortgage property was brought the property in

public auction and the said auction was held on 10.7.1978, the respondents purchased the property and filing the suit in O.S. No. 1632 of 1981 ,

they took the possession of the same ; that they have filed another suit in O.S. No. 8066 of 1980 against Gurumurthy for delivery of possession of

the portion under his occupation and the same got dismissed and as per the settlement deed, Deenadayalu is entitled to one half of the property

and hence the respondents are also entitled to the same and Execution Petition filed for execution of the decree of the entire property which is not

liable and the same was dismissed and hence the E.A. No. 558 of 1995 was filed u/s 47 of C.P.C. and the same was allowed by the lower Court.

On such arguments advanced factually, the respondents would seek for dismissal of the above civil revision petition.

8. In consideration of the facts pleaded, having regard to the materials placed on record, and upon hearing the learned counsel for both, what

would be assessed by this Court is that the petitioners herein, who are the decree holders in O.S. No. 1643 of 1986 have filed E.P. No. 3567 of

1992 seeking delivery of possession in execution of the decree and at the fag end, for an enquiry in the Execution Petition, an application u/s 47 of

CPC has been filed by the defendants 1 and 2 and Judgment debtors in the suit, the lower Court having conducted an enquiry, has allowed the

E.A. No. 558 of 1995 filed u/s 47 of CPC, testifying the validity of which, the decree holders in the suit have come forward to file the above Civil

Revision Petition on the grounds extracted supra.

9. The subject matter with which the lower Court was concerned is the property covered in the suit in O.S. No. 1643 of 1986 and the same has

been decreed by the Court of original Jurisdiction and the execution petition has

been filed by the decree holders in E.P. No. 3567 of 1992

seeking to execute the decree passed in the said suit; that the delivery was ordered and the possession was handed over on an application filed by

the Judgment debtors and seeking police protection to break open the lock and deliver the suit properties in their favour, the defendants 1 and

2/Judgment debtors have come forward to file an application u/s 47 of CPC having stated something regarding the facts and circumstances of the

case, the lower Court even without knowing whether it stood in so far as the decision was to be made in an application filed by the respondents to

restrain the warrant for delivery of possession to the extent of one half of the suit property and to dismiss the Execution Petition with exemplary

costs; that the Court below without any valid discussion held on the subject and without knowing as to what to do when such an application has

been filed nor even knowing the law on the subject but blabbering something in a meaningless manner based on the factual position on the suit

which has been tried and decreed on a full trial held by the Court of the original Jurisdiction has passed the most erroneous order that can be

passed in an application of that sort, thus only revealing its ignorance of law on the subject, thereby allowing the said application in the most

undesirable manner shattering the faith and the sanctity attached in passing an order which must be a judicial order in the rule, since it can only be

termed as betrayal of the trust and confident attached in passing an order in the circumstances of the case.

10. The lower Court has simply forgotten to understand that it is the decree, which is the result of the sum total of a full trial held on the facts and

circumstances of the case and the law covering the subject, which has been sought to be executed by the decree holders as a right enshrined under

law in which event the Court sitting on decision of an application filed by the Judgment Debtors u/s 47 of CPC is expected to review the

Judgement and decree passed by the trial Court, in which event the lower Court cannot go beyond the decree, since it is not expected to pass the

second Judgment and decree assessing those facts and circumstances of the case, which have already been decided and the decree and Judgment

were passed by the Court of original Jurisdiction. The jurisdiction of the Court of execution and the scope being very much limited in an application

for review filed u/s 47 of CPC wherein it could only go into whether there is any error apparent on the facts of the decree to be executed by the decree holders and nothing else. At any cost, the Court of execution cannot go back or beyond the decree.

11. On the contrary blabbering something on the facts and circumstances which have already been decided on trial and the decree passed and in jumping into the conclusion without even offering any tangible reason for having arrived at on the said conclusion, has allowed the said application filed u/s 47 of CPC by the Judgment Debtors and if the said orders yet to be passed by the Judicial forums, no decree passed as a result of the trial could withstand and only the second trial could be conducted on a review application and there is no end of the litigations. By allowing the application filed u/s 47 Cr.P.C. the lower court has made the Judgment Debtor, the Decree Holder of, half of the suit property which the Court of Execution is not entitled to, since it is not the trial Court.

12. All other matters pleaded on the part of the respondents herein before the Lower Court in the said application deviating from the limitations settled by law and legal propositions are only beyond the permissible limits of law, which would neither be pleaded on the part of the respondents herein before the Lower Court nor the lower Court could entertain those unwanted pleadings much less for any decision to be arrived at on such application.

13. In short, an erroneous orders have been passed without any reason or ground quite against the dictum of law by the lower Court, not in consideration of the law and legal dictum but only on extraneous reasons, the lower Court has done and hence the said order passed by the lower Court becomes only liable to be set aside and the same is ordered accordingly. In result

- i) the above Civil Revision Petition succeeds and the same is allowed;
- ii) the fair and decretal order dated 24.2.2000 made in E.A. No. 558 of 1995 in E.P. No. 3567/92 by the Court of IX Assistant Judge, City Civil Court, Madras is set aside;
- iii) The Court of execution is directed to expedite the execution proceedings in E.P. No. 3567 of 1992 towards delivery of possession which is the

subject matter of the decree at any cost not later than two months from the date of receipt of a copy of this order .

iv) there will be no order as to costs.