
(2007) 01 MAD CK 0242
In the Madras High Court
Case No : C.R.P. (NPD) No. 6 of 2007

K. Sivasubramaniam and K. Sathyavathi	APPELLANT
Vs	
The Leigh Bazaar Merchants Association Ltd.	RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Citation : (2007) 01 MAD CK 0242

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : A. Thiagarajan, for the Appellant; Kandavel Doraisamy, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Revision Petition is directed against the Order of delivery of possession made in E.P.No.341/1993 in O.S.No. 4/1970, by the Sub Court, Salem. For convenience, parties are referred to in their original rank in O.S.No.4/1970.

2. The case had a chequered career of several rounds of litigation. Respondent/Plaintiff Association is pitted against the Superintendent of Police [now retired], relating to the site measuring 351/2" x 15" in Leigh Bazaar, Salem which is one of the main commercial area in Salem.

3. Factual background and various proceedings in nutshell are as follows:

3.1. 8:31 AM 2/21/2007 In the property measuring 351/2" x 15" in Leigh Bazaar, late Karupanna Gounder/D-1 had put up superstructure and running a Beeda Stall and tea stall, paying rent for the vacant land. The Plaintiff Association filed suit O.S.No.4/1970 for removal of superstructure and to hand over vacant possession. The first Defendant Karupanna Gounder died on 07.05.1977. Other Defendants viz., his wife, the Petitioner and daughter Sathyavathi were impleaded as Defendants. A compromise was effected between the parties on 23.02.1983 and a Compromise Decree was passed incorporating the various

terms in the Compromise, setting out time frame for performance of those clauses.

3.2 As per the terms of the Compromise, Defendants are to surrender the western side of the suit property to an extent of 13" x 15" before 30.04.1983 after removal of the superstructure. As per Clause 4, Respondent should construct shop in the vacant site and let it for rent as fixed in the compromise Decree and hand over the other property to the Defendant on or before 31.10.1983. Alleging that after construction the Plaintiff has not handed over the property, Defendants have filed O.S.No.531/1984 for damages. The Plaintiff Association has resisted that suit inter alia finding that after construction shop was handed over to the possession of the Defendants, suit O.S.No.531/1984 was dismissed. Appeal against that Judgment in A.S.No.135/1989 was also dismissed.

C.R.P.No.4620 and 4622/1987:

3.3 Plaintiff Association filed E.P.No.81/1986 to direct the Respondents to vacate the remaining portion of the suit property and the E.P. was ordered in favour of the Plaintiff Association. Challenging that Order, Defendants have filed CRP No.4620 and 4622 of 1987. Making certain observations, both the CRPs were dismissed, however giving liberty to the Plaintiff Association to take appropriate proceedings.

3.4 Plaintiff Association has filed E.P.No.341/1993 to execute Clause 5 and 6 of the Compromise Decree. Parties have adduced elaborate oral and documentary evidence. Before the Executing Court the short question that fell for consideration was whether the Tenant has handed over 13" x 15" to the landlord and whether possession of remaining property is to be delivered to the Plaintiff Association. Holding that the findings in O.S.No.531/1984 is binding upon the parties, the lower Court held that after construction of the shop, Defendants have taken possession of constructed portion of 13" x 15" and are bound to deliver possession of the remaining property and ordered delivery of the remaining portion.

4. Making elaborate submissions, the learned Counsel for the Petitioner Mr. A.Thiagarajan has inter alia raised the following contentions:

Terms of compromise was not at all complied with, by the Plaintiff Association and while so, the Defendants are not obligated to deliver possession of the remaining portion;

When the terms of compromise stipulate handing over possession of constructed portion to the Defendants, there was no necessity for one Sundaram to take possession;

Left Thumb Impression [LTI] in the Lease Deed is proved to be not that of Sitammal, by the opinion of finger print experts.

5. Drawing the attention of the Court to the Judgment in O.S.No.531/1984,

learned Senior Counsel Mr. K.Duraisami has submitted that there is a definite finding recording that there was no default by Plaintiff/Decree-Holder. It was urged that records and conduct of parties would clearly show that possession of tea stall had been taken over and after construction, possession had been handed over to the employee of the Defendant. Taking me through the various clauses of compromise, the learned Senior Counsel urged that if really the Plaintiff has not handed over the constructed portion to the Defendants, the Defendants would have definitely resorted to the performance of clauses of the compromise.

6. I have carefully examined the records and considered the rival submissions.

7. Controversy lies in a narrow compass. The question falling for consideration is when admittedly the Defendant has not handed over two portions, is it not open to the Plaintiff - Decree-Holder Association to execute the Decree.

8. The compromise Decree in O.S.No.4/1970 is a self contained Decree, granting liberty to either of the parties to execute the Decree. For proper appreciation of the contentions, at the risk of verbosity, it is necessary to refer to certain clauses of the compromise:

2)That the Plaintiff shall give three shops for the Defendants after construction of three shops in the entire suit property.

3)That the Defendants do vacate the western side of the suit property where there is a tea stall and do remove all the superstructure at their cost and delivery peaceful possession of the vacant site measuring east west 13 feet north to south 15 feet before 30.04.1983.

4)That the Plaintiff do construct one shop in the site and delivery possession to the Defendants before 31.08.1983.

5)That the Defendants shall shift the Beeda stall to such newly built shop and deliver peaceful possession of the remaining vacant site before 31.10.1983.

6)That later the Plaintiff shall construct two shops in the said vacant site and deliver possession to the Defendants before 31.12.1983.

...

10) That the Defendants do pay to the Plaintiff the monthly rent at Rs.85/- for the two shops after construction and for the one shop other than two shops the Defendants do pay to the Plaintiff the monthly rent at the rate of Rs.150/-.

11) That the third Defendant or his wife do execute the Lease Deed for three shops and do also pay to the Plaintiff two months rent as advance of each shop at the time of execution of the Lease Deed.

13) That if the Defendants fail to carry out any of the above conditions the suit O.S.4/70, O.S.249/69, O.S.844/73, O.S.906/78 shall be decreed as prayed for and the Plaintiff shall be entitled to execute the Decree against the Defendants.

14) That if the Plaintiff fails to comply with any of the terms noted above, Defendants shall be at liberty to apply for executing the Lease Deed and for recovery of possession from the Plaintiff through Court by executing the Decree with costs.

9. According to the Petitioner/Defendant they have surrendered the western portion of the property to the Plaintiff Association, who has put up construction but Plaintiff has not delivered back the same to the Defendants as per Clause 4 of the Decree. It was mainly contended that when the clauses stipulate handing over of constructed possession to the Defendants on execution of Lease Deed, there was no necessity to hand over possession of constructed shop to one Sundaram.

10. Merits of the above contention is to be weighed only in the light of the findings in O.S.No.531/1984. Alleging that Plaintiff Association has committed default in handing over possession of constructed western shop, the Defendants have filed O.S.No.531/1984 claiming damages. In the said suit, a specific issue was framed "whether Defendant [Plaintiff Association] has committed breach of terms of the compromise Decree in O.S.No.4/1970. In the said case, a definite finding was recorded to the effect that "in the portion in which delivery was given, construction has been put up and redelivery has been given to Plaintiff's employee viz., Sundaram". In the said suit O.S.No.531/1984, Court has thus given a clear finding. As per Clause 3 of compromise Decree, Plaintiff Association has reconstructed the shop and handed over to one Sundaram and the said Sundaram also paid rent. In O.S.No.531/1984, Court has also recorded a definite finding that the said Sundaram is an employee of the Petitioner. As against the finding in O.S.No.531/1984, Appeal A.S.No.135/1989 was preferred and the same was also dismissed, against which no second appeal was preferred. Findings recorded in O.S.No.531/1981 has thus become final. Elaborately referring to the findings in O.S.No.531/1984, the Executing Court has rightly held "as per Clause 3 of the Compromise Decree, western 1/3rd portion was delivered to the Decree-Holder, who in turn put up construction and handed over the same to the Judgment-Debtors through their Agent Sundaram is proved". I find no reason to differ from the reasonings and conclusion of the Executing Court.

11. As per Clause 4 of Compromise, the Plaintiff is to construct one shop in the Western side of the suit property and deliver possession to the Defendants. In O.S.No.531/1984 case of the Plaintiff that possession was handed over to the Defendant's employee Sundaram was accepted. Main contention of Defendant is, no document has been produced showing that the Revision Petitioner and his mother authorised the Plaintiff Decree-Holder to hand over possession to the said Sundaram. Handing over possession of constructed portion of Western portion of the suit property is denied by the Defendants. The finding regarding handing over of possession of western portion to Defendant's employee Sundaram reached finality in O.S.No.531/1984. While so, it is not open to the Revision Petitioner/Defendant to raise the contention in the execution proceedings.

12. As per the terms of the compromise, on redelivery of constructed shops, Defendants shall shift the beeda stall to such newly built shop and deliver possession of remaining vacant site before 31.10.1983. Thus redelivery of constructed portion is only one phase of the compromise. Redelivery of constructed portion would benefit Plaintiffs Decree-Holder by taking delivery of possession of the remaining extent i.e. 22"x15". By redelivery of constructed portion when the Plaintiff stands benefited by taking possession of the remaining extent, it is quite improbable for the Plaintiff in not effecting redelivery pursuant to compromise Decree. The contention of the Defendants denying redelivery to their employee Sundaram was rightly negated by the Executing Court.

13. According to the Defendants, Plaintiff has committed default in redelivery of constructed portion. In case of any default by the Plaintiff, Defendants could have very well invoked Clause 14. As per Clause 14, if the Plaintiff fails to comply with any of the terms, the Defendants shall be at liberty to apply for executing the Lease Deed and recover possession from the Plaintiff through Court. The fact that Defendants have not invoked Clause 14 and non filing of any Execution Petition by the Defendants only shows that there was no default on the part of the Plaintiff.

14. Much arguments were advanced over the disputed signature of Siddhammal and opinion of finger print expert. According to the Plaintiff Association, lease Agreement was executed by the second Defendant Siddhammal, as per terms of compromise and the said Sundaram is witness to the lease Agreement. Defendants contended that the said lease Agreement was fabricated and thumb impression found in the document is not that of his mother Siddhammal/second Defendant. The document was sent for finger print expert opinion. Fingerprint expert opined that thumb impression found in the lease Agreement is not identical with the specimen thumb impression sent for comparison. Since much arguments were advanced, both in the lower Court and this Court regarding the lease Agreement, I have carefully examined the records.

15. LTI of Siddhammal was sent in October 1998 for obtaining expert opinion and the same was sent back on the ground that the LTI of Siddhammal was not clear. Thereafter, specimen LTI of Siddhammal/2nd Defendant, said to have been obtained before Joint Registrar III Salem dated 10.07.2002, was sent for comparison. On comparison of specimen LTI of Siddhammal with the disputed LTI in the lease Agreement, fingerprint expert opined that the impression in the document in question are not identical with specimen LTI of Siddhammal. On behalf of the Revision Petitioner, opinion of fingerprint expert is very much relied upon to assail the case of Plaintiff Association.

16. Expert opinion of fingerprint against Siddhammal cannot be said to be conclusive, to throw away the case of Plaintiff Association. As pointed out by the lower Court, the Joint Registrar was not examined, to prove that the specimen LTI taken before him was that of Siddhammal. The question also arises as to why should specimen thumb impression was obtained before Joint Sub Registrar. The

question as to who identified Siddhammal before Joint Sub Registrar also remains unexplained. The specimen LTI marked as "S" sent for comparison is shrouded with doubtful circumstances. In consideration of the above circumstances, the lower Court has rightly held that the opinion of the fingerprint expert is not a conclusive proof to doubt the lease Agreement in favour of Siddhammal.

17. Defendants have failed to establish that Plaintiff Association has not complied with Clause 3 of compromise. Assuming that the Plaintiff Association has failed to comply with the terms, the Defendants are at liberty to file execution Petition to execute the Decree as per the compromise Decree. As pointed out by the Executing Court, till date Defendants have not chosen to file any such execution proceedings to execute the terms of the compromise.

18. Suit is of the year 1970. Compromise Decree was passed on 23.02.1983. It is very unfortunate that a Police Officer has entangled the Plaintiff Association in the prolonged litigation, due to which Plaintiff Association was not able to enjoy the fruits of the Decree even after two decades. The Executing Court has rightly ordered delivery of possession of the remaining extent and the impugned Order is to be confirmed. This Revision Petition is bereft of merits and is bound to fail.

19. In the result, the order passed in R.E.P.No.341/1993 in O.S.No.4/1970, on the file of the Additional Subordinate Judge, Salem, is confirmed and this Revision Petition is dismissed. No costs. Consequently, MP No.2/2007 is also dismissed.