

(2017) 08 MAD CK 0028

In the Madras High Court

Case No : 215 of 2007 and M P (MD) No 1 of 2007

Kanaganathan

APPELLANT

Vs

Arulmighu Naganathaswamy Temple Sabapathi Kattalai
rep.by its Trustee Thangavel Mudaliar s/o.Sabapathi Mudaliar

RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Citation : (2017) 08 MAD CK 0028

Hon'ble Judges : T.Ravindran

Bench : SINGLE BENCH

Advocate : T.Ravindran

Final Decision : Dismissed

Judgement

1. The respondent herein levied the suit in O.S.No.28 of 1995 against the petitioner herein for recovery of possession and arrears of rent. It is found that the respondent has obtained a decree against the petitioner as prayed for and inasmuch as the petitioner has failed to comply with the terms of the decree, it is found that the respondent has levied execution proceedings against the petitioner for recovery of possession in E.P.No.82 of 2005.

2. The petitioner resisted the above said execution petition by contending that there is no such Sabapathi Kattalai attached with Arulmighu Naganathaswamy Temple and there is only one Kattalai by name Natarajaswamy Kattalai and as such, the respondent has no right to execute the decree and the petitioner has been regularly paying the rent till 1994 and thereafter, as dispute arose between the trustees of Sabapathi Kattalai and Natarajaswamy Kattalai, the petitioner was unable to pay the rent from 1995

onwards and thus, according to the petitioner, the execution

petition preferred by the respondent is not maintainable and liable to be dismissed.

3. In support of the contentions of the respective parties, it is found that no oral evidence has been adduced and on the side of the petitioner,

Ex.R1 has been marked and no document has been marked on the side of the respondent.

4. The Court below, on a consideration of the rival contentions put forth by the respective parties, rejected the contentions put forth by the

petitioner and passed further orders in the execution proceedings in favour of the respondent. Impugning the same, the present civil revision petition

has been instituted.

5. As reiterated in the counter, it is argued by the learned counsel for the petitioner that there is no such Sabapathi Kattalai in existence and only

Natarajaswamy Kattalai is in existence attached with Arumligu Naganathaswamy Temple and thus, according to the learned counsel for the

petitioner, the decree obtained by the respondent is a nullity and cannot be executed and therefore, the Court below should have dismissed the

execution petition and inasmuch as the Court below rejected the contentions put forth by the petitioner in an erroneous and improper manner,

according to the learned counsel for the petitioner, the necessity for the institution of this civil revision petition. Further, it is also contended by the

learned counsel for the petitioner that the decree obtained by the respondent has become inexecutable on account of the decree passed in

O.S.No.14 of 2006 in favour of Arulmighu Naganathaswamy Temple, whereunder the property involved in the matter has been directed to be

handed over to Natarajaswamy Kattalai.

6. Per contra, it is contended by the learned counsel for the respondent that all these contentions if have any semblance of truth and legality should

have been raised by the petitioner during the course of the trial and on the other hand, the petitioner has failed to raise such pleas before the Trial

Court and accordingly, it is stated that the Court below has granted the decree in favour of the respondent as prayed for and further, according to

the learned counsel for the respondent, a perusal of the counter filed by the petitioner would go to show that he himself has admitted the existence

of Sabapathi Kattalai and further, according to the petitioner himself, it is stated that as dispute arose between the trustees of Sabapathi Kattalai

and Natarajaswamy Kattalai, the petitioner was unable to pay the rent and this would only go to show the falsity of the defence put forth by the

petitioner to resist the execution proceedings and further, according to the learned counsel for the respondent, the contention put forth by the

learned counsel for the petitioner that the decree obtained by the respondent has become inexecutable on account of the decree passed in

O.S.No.14 of 2006, dated 05.06.2006, cannot be countenanced and therefore, according to him, the impugned order does not call for any

interference from this Court.

7. Considering the rival contentions put forth by the respective parties, it is found that as rightly argued by the learned counsel for the respondent, if

the contentions put forth by the petitioner before the Executing Court as well as this Court are valid, the same would have been raised by him

before the Trial Court. On the other hand, it is found that the petitioner has failed to contest the suit levied by the respondent and thereby invited

the decree against him to be passed in the said suit. This would only go to show that inasmuch as the petitioner has accepted the entitlement of the

respondent to claim the recovery of possession of the suit property from the petitioner, it is found that the petitioner has not evinced any interest to

contest the suit preferred by the respondent.

8. The main contention put forth by the petitioner is that Sabapathi Kattalai is not in existence and only Natarajaswamy Kattalai is in existence

attached with Arumligu Naganathaswamy Temple and therefore, the decree obtained by the respondent has become a nullity and inexecutable.

However, the said fact cannot be accepted in any manner. Even a perusal of the counter filed by the petitioner would go to show that he has

admitted the existence of Sabapathi Kattalai. According to the petitioner, on account of the dispute between the trustees of Sabapathi Kattalai and

Natarajaswamy Kattalai, he was unable to tender the rent in respect of the property occupied by him from 1995 onwards. This aspect would

clearly establish that the petitioner has admitted the existence of Sabapathi Kattalai and therefore, the plea now put forth that Sabapathi Kattalai is

not existence as such cannot be countenanced in any manner.

9. The petitioner has also raised a contention though not raised in the counter filed by him in the execution proceedings that a decree had been passed in O.S.No.14 of 2006 empowering Natarajaswamy Kattalai to take possession of the property involved in the matter and the said decree having been passed based upon the compromise entered into between the parties, where the petitioner as well as Thangavel Mudaliar, who is the trustee of Sabapathi Kattalai, are parties, according to the petitioner, only Natarajaswamy Kattalai is entitled to recover the possession of the property involved in the matter and the respondent is not entitled to recover the possession of the property by way of the execution proceedings.

However, as rightly put forth by the learned counsel for the respondent, a perusal of the description of the properties involved in O.S.No.28 of 1995 and O.S.No.14 of 2006 would go to show that the properties involved in the suits above mentioned are not shown to be related to each other or similar. It is found that in O.S.No.14 of 2006, four schedule of properties have been given and the same do not have any resemblance or connection with the schedule of the property described in O.S.No.28 of 1995. The boundaries found in the description of the properties involved in the above said suits are seen to be completely different and not similar and further, it is also found that if really Natarajaswamy Kattalai is entitled to recover the possession of the property involved in the present subject, the property described in O.S.No.28 of 1995 would have been specifically and clearly included in O.S.No.14 of 2006. Further, it is also found that Sabapathi Kattalai as such is not a party to the proceedings in O.S.No.14 of 2006 and when adding further the property described in O.S.No.28 of 1995 is not the subject matter of O.S.No.14 of 2006, it is clearly found that the decree passed in O.S.No.14 of 2006 would not in any manner render the decree passed in O.S.No.28 of 1995 as a nullity or inexecutable. Therefore, the contention put forth by the petitioner that on account of the decree passed in O.S.No.14 of 2006, the decree obtained by the respondent in O.S.No.28 of 1995 has become a nullity and inexecutable as such cannot be accepted in any manner. It is found that only with a view to thwart the execution proceedings one way or the other and squat on the property endlessly without paying the rent, it is found that the petitioner has taken the above plea and the same cannot be appreciated and encouraged in any manner.

10. In support of the contention of the petitioner that the decree would become a nullity if by change of circumstance and subsequent developments, the said decree has been made inexecutable by the passing of another decree in another proceedings, the learned counsel for the petitioner placed reliance upon the decisions reported in (1976) 1 SCC 115 [Sri Vidya Sagar vs. Smt.Sudesh Kumari and others], AIR 1991 Orissa 36 [Smt.Radhi Dei and others vs. Lalit Bihari Mohanty], (1996) 3 SCC 301 [Sabitri Dei and others vs. Sarat Chandra Rout and others] and (1999) 9 SCC 198 [Municipal Board, Kishangarh vs. Chandmal and Co.]. However, as rightly put forth by the learned counsel for the respondent, the above cited decisions, in my considered opinion, in the light of the above discussions, are found to be not applicable to the facts and circumstances of the present case.

11. In view of the foregoing reasons, it is found that the Executing Court has rightly discountenanced the pleas set forth by the petitioner in the execution proceedings and passed further orders in the execution proceedings in favour of the respondent. In such view of the matter, the impugned order of the Court below does not call for any interference from this Court.

12. Resultantly, the civil revision petition is dismissed with costs. Consequently, connected miscellaneous petition is closed.