courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/09/2026

(2008) 04 MAD CK 0064

In the Madras High Court

Case No : CRP NPD No''s. 3478 and 3699 of 2007 and M.P. No''s. 1 to 3 of 2007

Mrs. N. Krishnaveni — APPELLANT

Vs

P.L. Narasimha Rao
P.L. Narasimha Rao Vs Mrs. N. Krishnaveni — RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146, 151, 47
Constitution of India, 1950 — Article 142, 227
Evidence Act, 1872 — Section 68
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(2), 10(3), 10(4)(2), 16A

Citation : (2008) 5 MLJ 78

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : R. Srinivas, in CRP NPD No. 3699 of 2007 and Ashok Menon, in CRP No. 3478 and 3942 of 2007, for the Appellant; R. Srinivas in CRP Nos. 3478 and 3942 of 2007 and Ashok Menon in CRP NPD No. 3699 of 2007, for the Respondent

Judgement

K. Venkataraman, J.—The 82 years old decree Holder, who could not prosecute the decree of eviction obtained by her mother, has

knocked the doors of justice by filing the Civil Revision Petition in C.R.P. ((NPD)No. 3699 of 2007. The Judgment debtor, who is trying to stall

the execution of the decree of eviction is also before this Court in filing the Revision in C.R.P. No. 3478 and 3942 of 2007.

2. C.R.P. No. 3478 of 2007 was filed by the judgment debtor challenging the order made in E.A. No. 136 of 2007 in E.P. No. 12 of 1993 of the

learned District Munsif at Alandur. C.R.P. No. 3942 of 2007 had been filed by the above said judgment debtor, against the order dated 6.9.2007

of the learned District Munsif, Alandur made in I.A. No. 2737 of 2007 in O.S. No.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl...

556 of 1997, in which he is the defendant. C.R.P. No. 3699

of 2007 had been filed by the landlady challenging the order made by the learned District Munsif, Alandur dated 27.07.2006 in E.P. No. 12 of

1993 in R.C.O.P. No. 4 of 1978.

3. The petitioner in C.R.P.(NPD)No. 3699 of 2007 is referred as decree Holder and the respondent thereon, namely the petitioner in the other

two Revisions in C.R.P.Nos. 3478 and 3942 of 2007 is referred as Judgment debtor in this order for the sake of convenience.

4. The short facts, which are necessary for the disposal of the present revisions are as follows:

(a) The subject matter of the property was originally owned by decree holder''s grandfather. He has purchased the said property by a registered

sale deed dated 20.3.1946. He died on 18.11.1966. Thereafter, the property was acquired by V.K. Jayalakshmi, mother of the present decree

holder. She leased out the property to one P.L.Narasimha Rao, the judgment debtor herein by a lease deed dated 23.05.1967. Later, she has filed

R.C.O.P. No. 4 of 1978 before the learned District Munsif, Poonamallee, seeking eviction of the judgment debtor herein. The said R.C.O.P. had

been filed u/s 10(2) (i) and (iii), Section 10(3)(a)(i) and Section 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. An ex-parte

order of eviction was passed on 11.01.1979. Aggrieved over the same, the judgment debtor had filed C.M.A. No. 15 of 1979 before the

appellate authority. By an order dated 15.12.1979, the said C.M.A. No. 15 of 1979 was allowed and remanded back to the Rent Controller.

(b) Again, an ex-parte order of eviction was passed due to non appearance of the judgment debtor on 18.06.1982. Thereafter, the judgment

debtor filed an application in I.A. No. 89 of 1982 to set aside the ex-parte order of eviction on 14.06.1982. The trial Judge dismissed the said

application on 18.09.1982. The judgment debtor preferred an appeal in R.C.A. No. 36 of 1982 before the Subordinate Judge, Chengalpattu. The

learned Subordinate Judge, Chengalpattu dismissed the said appeal by his order dated 09.11.1983 thereby confirming the order of the Trial Judge.

Aggrieved over the same, the judgment debtor preferred a revision in C.R.P. No. 5584 of 1983 before this Court. The said Civil Revision Petition

was dismissed for default on 26.2.1985.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

(c) Later, the judgment debtor filed an application in C.M.P. No. 6912 of 1985 to condone the delay in filing the application to restore the C.R.P.

No. 5584 of 1983, which has dismissed for default. The same was also dismissed by this Court by an order dated 17.02.1986.

(d) Thereafter, Smt.V.K. Jayalakshmi, Mother of the present decree holder filed E.P. No. 12 of 1993 before the District Munsif, Poonamallee for

executing the order of eviction obtained in R.C.O.P. No. 4 of 1978. The said E.P was transferred to the file of District Munsif, Tambaram and the

Judgment debtor filed E.A. No. 11 of 1993 u/s 47 of C.P.C. on the ground that the E.P. cannot be executed. The said E.A. No. 11 of 1993 was

allowed consequent to the dismissal of E.P. No. 12 of 1993. Later, E.A. No. 17 of 1994 was filed by the decree holder to restore E.P. No. 12 of

1993 and the same was dismissed by the trial Judge on 19.01.1995. Questioning the said order, the decree holder preferred the revision before

this Court in C.R.P. No. 1388 of 1995 and the said revision was allowed on 19.02.1998 and hence E.P. No. 32 of 1991 was restored on file.

(e) Thereafter, the judgment debtor filed E.A. No. 75 of 2002 u/s 47 of C.P.C. on 12.03.2002. Notice has been ordered to the mother of the

decree holder. Later on 25.09.2002, the original decree holder V.K. Jayalakshmi died. E.A. No. 48 of 2003 was filed to implead the legal

representative namely, the present decree holder. The said E.A. No. 48 of 2003 was allowed and the present decree holder was impleaded as

legal representative of original decree holder one V.K. Jayalakshmi. Consequential petition has been filed by the decree holder in E.A. No. 115 of

2003. Counter affidavit filed by the present judgment debtor in the said E.A. and by an order dated 07.10.2003, the said E.A. was allowed. The

present judgement debtor filed review application to review the order in E.A. No. 115 of 2003 along with the conde delay petition which was later

dismissed in the second month of 2004. The present decree holder, thereafter filed amendment in the execution petition and the judgment debtor

carried out the amendment in E.A. No. 75 of 2002.

(f) Thereafter, the decree holder filed C.R.P. No. 1718 of 2006 before this Court to struck down the E.A. No. 75 of 2002 filed by the judgment

debtor u/s 47 of C.P.C and this Court by an order dated 13.04.1007 struck down the E.A. No. 75 of 2002 and further ordered for an early

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

delivery of possession of property. The judgment debtor preferred S.L.P.(C) No. 8125 of 2007 before the Hon''ble Apex Court. However, the

said SLP filed by the judgment debtor was dismissed on 14.05.2007. In the mean while, in the execution petition, the judgment debtor has filed

proof affidavit on 11.06.2007 and filed list of witnesses on 26.06.2007. Thereafter, the judgment debtor filed E.A. No. 122 of 2007 questioning

the vakalat of the decree holder Smt.N.Krishnaveni on certain technical grounds. The said application was dismissed by the trial Court on

06.09.2007.

(g) Later, the judgment debtor filed E.A. No. 155 to 158 of 2007, seeking to re-open the evidence of P.W.1, recall P.W.1 and for marking

additional documents etc. The decree holder had not objected the said applications and the same were allowed on 21.09.2007. Later, the decree

holder filed E.A. No. 136 of 2007 on 24.09.2007 to re-open the list of witnesses 2 to 7. The said application was dismissed in respect of reopen

of list of witnesses No. 2 to 7 and allowed only in respect of re-opening of list witness No. 10 alone, by an order dated 24.09.2007 and C.R.P.

No. 3478 of 2007 was filed against the said order dis-allowing to re-open list witnesses 2 to 7. The judgment debtor, thereafter filed E.A. No.

227 of 2007, seeking for the decree holder to produce the succession certificate.

(h) In the meantime, the decree holder filed the suit in O.S. No. 556 of 1997 before the District Munsif, Alandur for permanent injunction

restraining the judgment debtor from adding or altering or proceeding with any sort of construction in the suit property. In the said proceeding, the

judgment debtor filed an application to strike off the vakalat filed by the two advocates namely V. Muthuraman and G.Vijayakumar on behalf of

the present decree holder in the said suit in O.S. No. 556 of 1997. The said application was dismissed by the Court below and C.R.P. No. 3942

of 2007 was filed by the Judgment debtor.

(i) Thereafter, the decree holder, against the order of the learned District Munsif ordering issue of summons to the witnesses cited in the list of

witnesses dated 27.06.2007 had filed C.R.P. No. 3699 of 2007.

5. On the above backdrop of the matter, now let us consider the grievances of the decree holder and the judgment debtor.

6. The learned Counsel appearing for the decree holder has raised the following

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

contentions.

a. The judgment debtor is dragging on the proceedings thereby preventing the decree holder from enjoying the fruits of the decree on one pretext

or other and the same cannot be entertained by this Court.

b. When the present decree holder''s mother namely, V.K. Jayalakshmi obtained an order of eviction against the judgment debtor in R.C.O.P. No.

4 of 1978 before the learned District Munsif, Poonamallee and the same is sought to be executed by her daughter, the present decree holder, the

same cannot be stalled by the judgment debtor on one pretext or the other.

c. The executing Court cannot go beyond the decree obtained in R.C.O.P. No. 4 of 1978 and hence the judgment debtor cannot be allowed to

file one application after another on untenable grounds.

d. When the judgment debtor filed E.A. No. 75 of 2002 u/s 47 of C.P.C. raising all untenable grounds thereby raising a point that the decree

obtained in R.C.O.P. No. 4 of 1978 cannot be executed and when the said E.A. No. 75 of 2002 was struck down by this Court in C.R.P. No.

1718 of 2006, by an order dated 13.04.2007, which was confirmed by the Hon''ble Apex Court by an order dated 14.05.2007 in SLP No. 8125

of 2007, the execution petition filed by the decree holder, automatically should have been allowed in favour of the decree holder thereby ordering

delivery of the property in question. Instead the learned Trial Judge ought not to have entertained the list of witnessed filed at the end of the

judgment debtor and the innumerable applications filed by the judgment debtor raising untenable grounds.

7. Thus, the sum and substance of the argument of Mr.R.Srinivas, learned Counsel appearing for the petitioner is that the executing Court has gone

beyond the scope and jurisdiction vested in it, which requires consideration by this Court.

8. Per Court, Mr.Ashok Menon, the learned Counsel appearing for judgment debtor contended that

a) the eviction order obtained by the mother of the decree holder cannot be executed validly since no valid decree had been obtained in the said

proceedings.

b) the judgment debtor cannot be prevented from raising objection as admissible in Procedure code.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

c) the person, who is prosecuting the execution petition, is not the decree holder.

d) The eviction petition filed against a tenant, who is running a School in the petition premises is not maintainable and hence the order of eviction

cannot be enforced. Thus, the learned Counsel appearing for the judgment debtor sought for the dismissal of C.R.P. No. 3699of 2007 and sought

for allowing the C.R.P. No. 3478 and 3942 of 2007.

9. On the basis of the above referred pleadings and the submissions made by the learned Counsel appearing for the decree holder and the

judgment debtor, now let me discuss and decide the matter in issue.

10. In C.R.P. No. 3942 of 2007, the judgment debtor is canvassing the correctness or otherwise of the order made in I.A. No. 2737 of 2007 in

O.S. No. 556 of 1997. Admittedly, O.S. No. 556 of 1997 was filed by the decree holder against the judgment debtor for permanent injunction

restraining him from adding or altering or proceeding with any sort of construction in the suit property. In the said suit, the judgment debtor being

the defendant had filed I.A. No. 2737 of 2007 for striking off the vakalat filed by the advocates namely, V. Muthuraman and G.Vijayakumar in the

said suit. The reason for filing such application is set out in short hereunder:

(a) The advocates, who have filed vakalat in the above suit in the cause title mentioned as Mrs.V.K. Jayalakshmi died, represented by her attorney

Mr.Seetharaman. Admittedly, in the vakalat, the name of N.Krishnaveni, present decree-holder does not find place in the cause title. Thus, the act

of the counsel amounts to professional misconduct. The petitioner, therefore, filed the said I.A. No. 2737 of 2007 for striking off the vakalat filed

by the said advocates in the said suit.

(b) Counter affidavit was filed by the decree holder N.Krishnaveni, wherein, the following facts have been set out: Originally her mother was the

absolute owner of the suit schedule property and the judgment debtor was inducted as a tenant under her mother. She filed R.C.O.P. No. 4 of

1978 against the judgment debtor and the same has been decreed. Consequently, E.P. No. 12 of 1993 had been filed. After the demise of her

mother, she engaged the above referred counsels as her advocates to contest the case. There is no professional misconduct in this regard. After

filing the petition to implead the present decree holder as the legal heir of the decree holder, the judgment debtor had filed his counter and the same

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

was allowed. No appeal has been preferred against the said order. Narrating the above facts, the decree holder sought dismissal of the said

application in I.A. No. 2737 of 2007.

(c) On considering the above facts, the Court below, had rejected the contention of the judgment debtor and dismissed the application in I.A. No.

2737 of 2007 by an order dated 06.09.2007.

11. The learned Trial Judge dismissed the said application on the following grounds.

a) The suit was filed by Mrs. V.K. Jayalakshmi, who later died and hence the daughter N. Krishnaveni filed an application to implead herself as a

party to the suit in I.A. No. 2438 of 2002. In the said impleading application, advocates V. Muthuraman and G.Vijayakumar filed their vakalat on

behalf of N.Krishnaveni, the decree holder. The said application was allowed.

b) No doubt in the vakalat, the name of Mrs.N.Krishnaveni was not mentioned in the cause title. But the same cannot be a ground for holding that

the vakalat is improper in execution since the signature of the executant is available in the vakalat and the cause title of the suit was correctly

mentioned in the vakalat. The executant has confirmed the execution of vakalat by filing a counter in the said application.

c) Subsequent to the filing of the vakalat, several applications and counters were filed on behalf of the executant N.Krishnaveni through the very

same advocates.

d) The suit is of the year 1997 and connected E.P. No. 12 of 1993 is also pending before this Court.

On the above reasoning, the application filed by the judgment debtor in I.A. No. 2737 of 2007 was dismissed.

12. The said reasoning given by the Court below, is totally on sound footing. Merely because in the cause title only the name of the deceased

V.K.Jayalakshmi has been shown and the name of the present decree holder was not shown, cannot be a ground to reject the vakalat. As rightly

pointed out by the Court below, the signature of the executant is available in the vakalat and more than that she has confirmed the execution of the

vakalat by filing the counter affidavit in the said proceedings. In the applications taken out by the judgment debtor, counter affidavit was filed on

behalf of the executant N.Krishnaveni through the very same advocates. While

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

so, the technical plea that has been taken by the judgment debtor

cannot be accepted. Perhaps, this is one mode of dragging on the proceedings thereby preventing the decree holder from taking possession of the

property in pursuant to the decree of eviction obtained against the judgment debtor.

13. In the result, I am not inclined to accept the contentions raised at the end of the judgment debtor and the order of the learned District Munsif at

Alandur in the said I.A. referred to above is liable to be confirmed and accordingly confirmed.

14. C.R.P. No. 3478 of 2007, has been filed by the judgment debtor against the order made in E.A. No. 136 of 2007 of the learned District

Munsif, Alandur dated 24.09.2007. The said E.A. was filed by the judgment debtor against the dismissal of the said E.A., which has been filed to

re-open the list of witnesses from 2 to 7 and permit him to take necessary steps to serve summons on them.

15. The facts narrated by the judgment debtor for filing such application in E.A. No. 136 of 2007 in nutshell is given under:

(a) The judgment debtor filed list of witnesses memo on 26.09.2007 and taken necessary steps. Due to their inability, the witnesses though

received summons could not appear before the Court. Hence, the judgment debtor filed application praying to give reasonable time for witnesses

to depose their evidence before the said Court. The said petition was returned for want of maintainability. Thereafter, for the appearance of the

witnesses, the matter was posted on 27.06.2007 onwards and the evidence had been closed abruptly on 21.07.2007. The examination of the list

witness No. 10 has been closed abruptly on 17.08.2007 stating that the steps were not taken by the petitioner. Thus, narrating the above facts, the

said I.A. was filed.

(b) Counter affidavit filed on behalf of the decree holder, in nutshell, is as follows:

The judgment debtor has given the list of witnesses on 26.06.2007 and has paid batta on 26.06.2007. The matter was re posted to 29.06.2007.

The first witness in the list was examined as R.W.2 and the matter was adjourned to 02.07.2007. On that day, the judgment debtor filed batta for

the other witnesses and the same matter was posted to 03.07.2007. The witness summons were served on them and they failed to appear before

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

the Court. Since, the judgment debtor had failed to take necessary steps for all the witnesses, the Court below closed the evidence on the side of

the judgment debtor on 18.08.2007 and the matter was posted for arguments. The application had been filed only to drag on the proceedings.

Thus, the counter affidavit sought for the dismissal of the said E.A.

(c) The learned trial Judge considered the matter in extenso and dismissed the application preferred by the judgment debtor.

(d) Admittedly, this Court by an order dated 13.04.2007 in C.R.P.Nos. 1718 to 1719 of 2006 had directed the executing Court to dispose of the

E.P. as expeditiously as possible.

(e) Later on 07.06.2007, the learned Counsel appearing for the decree holder had endorsed that no oral evidence on the side of the decree holder

and the evidence as such has been closed. Thereafter, the matter seems to have been adjourned to 19.06.2007 for the evidence of the judgment

debtor. Later, at the request of the learned Counsel appearing for the judgment debtor, the matter was adjourned to 11.06.2007. On 11.06.2007,

proof affidavit on behalf of the judgment debtor seems to have been filed. Exs.R1 to R4 were marked. Thereafter, only one witnesses namely

R.W.1 was examined. Thereafter, on the basis of the memo filed by the judgment debtor listing out the witnesses, the matter seems to have been

adjourned to 27.06.2007 for further witnesses on the side of the judgment debtor. Out of the 10 witnesses cited in the list of witnesses filed at the

end of the judgment debtor, one witness was examined as R.W.2. Later batta seems to have been paid for the list witnesses 2 and 3. But, they

were not present when the matter was called on 03.07.2007. Thereafter, the matter seems to have been posted 07.07.2007, 06.07.2007 and

10.07.2007. Though the batta has been served on the witnesses given by the judgment debtor, they have not appeared before the Court below.

The Court below had elaborately discussed about the various dates on which the matter was listed for examination of the witnesses cited by the

judgment debtor.

(f) Considering the above facts and considering the fact that this Court in C.R.P. No. 1718 and 1719 of 2006 had directed the executing Court to

dispose of the E.P. as expeditiously as possible, the application preferred by the judgment debtor to re-open the list of witnesses 2 to 7 was

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

dismissed and the petition was allowed in respect to re-open of list witness No. 10 alone and summon were directed to be issued to the list witness

No. 10 on payment of witness batta.

(g) The above narration of the facts will clearly establish that the intention of the judgment debtor is only to drag on the proceedings and it is

manifestly clear that he does not want the decree holder to enjoy the fruits of the decree. The Court below therefore justified in rejecting the

request of the Judgment debtor to re-open the case for the purpose of examining list witnesses Nos. 2 to 7.

(h) In the result, I am unable to interfere with the said order of the learned trial Judge made in E.A. No. 136 of 2007 dated 24.09.2007.

16. Now, we are left with only the other revision namely C.R.P. No. 3699 of 2007 filed by the decree holder. The said revision had been filed,

challenging the order of the learned District Munsit, Alandur dated 27.06.2007 in E.P. No. 12 of 1993 in R.C.O.P. No. 4 of 1978 accepting the

list of witnesses filed by the respondent and ordering issue of process for those witnesses with a further direction to the learned District Munsif,

Alandur to close all the existing I.As with a further direction to the executing court not to entertain any further application at the instances of the

Judgment debtor and to deliver the vacant possession of the property in question.

17. (a). The contention raised at the end of the decree holder is that when this Court has struck down the application filed by the judgment debtor

u/s 47 C.P.C. in E.A. No. 75 of 2007 in C.R.P. No. 1718 of 2006, the judgment debtor cannot be allowed to raise the same contentions in the

execution petition laid by the decree holder. Further, the reason for examining the witnesses in execution petition has not been assigned. The

executing Court cannot go beyond the decree that has been granted in favour of the decree holder. Hence, it will be a wasteful exercise to examine

the witnesses sought to be summoned by the judgment debtor.

(b) On the other hand, the learned Counsel appearing for the judgment debtor submitted that though this Court had struck down the E.A. No. 75

of 2002 filed at the instance of the judgment debtor u/s 47 of C.P.C, the judgment debtor has got right to question the decree obtained against him

on the ground of nullity. Further, according to the learned Counsel appearing for the judgment debtor, since the school is being run in the suit

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

property , eviction petition cannot be filed in view of the prohibition made in Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act

18 of 1960as amended by Act 23 of 1973. In view of the fact that the judgment debtor was running a school the eviction petition that has been

filed by the mother of the present decree holder is a nullity and any order that has been passed in the eviction petition cannot be executed.

(c) In the backdrop of the submission made by the learned Counsel appearing for the decree holder and the judgment debtor, now let us see what

was the plea that has been taken by the judgment debtor in his application u/s 47 of C.P.C.

(d) In nutshell, the following grounds have been raised by the judgment debtor in his application u/s 47 of C.P.C.

(i) The said E.P. is based on the exparte order, obtained by a stranger V.V.Ramamurthy fraudulently with his exparte evidence while

V.R.Raghuram was on record in the R.C.O.P. No. 4/78 as power agent of the decree holder.

(ii) The judgment debtor is the owner of the petition (school) premises with his several superstructures, paying property tax and hence this Hon''ble

Court has no jurisdiction to entertain the above E.P. and hence the E.P. is liable to be dismissed.

(iii) The E.P. is liable to be dismissed as there is title disputes in between the decree holder and judgment debtor.

(iv) The amended E.P. which does not have proper description of the schedule of property as required by law cannot be entertained by this

Hon''ble Court and hence the E.P. is liable to be dismissed.

(v) N.Krishnaveni, the alleged legal representative of V.K.Jayalakshmi, deceased decree holder have not proved that she is daughter of

V.K.Jayalakshmi as alleged in the said invalid will by producing either her legal heir certificate or her succession certificate from competent court of

law.

(vi) N.Krishnaveni has not produced the alleged unregistered original will said to have been executed by the deceased V.K.Jayalakshmi in favour

of her in respect of the petition premises. The notarised xerox copy of the said alleged will secondary evidence cannot be necessary proof for the

execution of the said alleged will in the court of law.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

(vii) N.Krishnaveni has not examined any one of the witnesses in the alleged notarised xerox copy of the unregistered will as envisaged by Section

68 of Evidence Act which falls short of legal requirement of the said will and hence it cannot be taken into consideration for the purpose of

establishing the claim of N.Krishnaveni.

(viii) The alleged unregistered will is not a valid document as it does not contain the signature of the testator in every page of the said alleged will.

(ix) The executors in the said alleged will alone can prosecute any legal proceedings and hence the prosecution of the above E.P. by N.Krishnaveni

is contrary to law and the executors also cannot prosecute without obtaining an order of Letters of Administration with the original will annexed

from a competent Court of law.

(x) There is irregularities in filing her impleading petition E.A. No. 48 of 2003 in E.P. No. 12 of 1993 and the amendment petition E.A. No. 115 of

2003 in E.P. No. 12 of 2003 and hence impleading Mrs.N.Krishnaveni as legal representative of the deceased decree holder is not maintainable.

18. As stated already, the revision has been filed before this Court in C.R.P. No. 1718 and 1719 of 2006 and Paragraph 9 to 16 of the order of

this Court in the said revisions are usefully extracted hereunder:

Para 9. Keeping in mind the proposition of law laid down by the Apex Court, if we look at the very grounds or objections (E.A. No. 75 of 2002),

it would be evident that they do not disclose any factor for nullifying the order of eviction or disclose any lack of jurisdiction. Most of the points

raised in the E.A have been already raised in the RCOP in the form of counter. The other points are objections which ought to have been raised

and agitated in the main RCOP proceedings, which the respondent has failed. Since the respondent had not contested the RCOP and allowed an

order of eviction to be passed and also allowed the same to be confirmed by this Court in CRP. No. 5584 of 1983, none of the points can be now

allowed to be raised in the E.A.75 of 2002. As per the decision of the Supreme Court, cited supra, the Executing Court cannot hold an enquiry

into the validity of the order of eviction as a nullity and without jurisdiction, unless there is a material defect apparent on the face of the record.

Therefore, if the dictum of the Apex Court is to be followed as it is a law of the country under Article 142 of the Constitution of India, then every

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

subordinate courts ought to have apply the same, examine the contents of the same carefully and refuse to number the application filed u/s 47 CPC

to take on file in fit cases.

Para 10. Taking cognizance of a plaint or petition or application is not ministerial act. The Judicial Officer has to apply his mind before taking action

on it. A summons can be issued only after application of mind. Therefore, the Executing Court ought not to have entertained the E.A.75 of 2002

and rejected the same at the threshold and prevent mischief since it prayed for a relief which could never be granted by it. It is to be seen that the

respondent asking for unsustainable reliefs has been squatting on the property and preventing and obstructing the execution by filing petition u/s 47

CPC.

Para 11. It is also to be noted that, even though the order of eviction is an exparte order, unless the same is set aside it is also bind. In the present

case the exparte order has been confirmed by the appellate court and also by this Court and it has become final and therefore, the respondent

cannot challenge the same in an application filed u/s 47 CPC as a nullity. Further, the respondent cannot raise objection regarding change of Power

agents or impleadment of L.Rs in an application filed u/s 47 CPC, instead he ought to have raised the same at the appropriate proceedings and if

he had not done so, the orders though interlocutory will become final. So also, the plea of the respondent that the petitioner had not produced a

Succession Certificate and the Will has not been probated is untenable. Succession Certificate is required only movable properties. Further the

Will has been executed at New Delhi and it does not required to be probated in this Court. In fact, the legal heir ship certificate has been produced

by the petitioner and the Will has also been produced by Court. In present case, after the revision petitioner has been impleaded as L.R in the said

E.A., the consequential amendments were made by the petitioner. But the respondent due to such impleadment filed an amended petition copy. In

the said amended petition the respondent instead of stopping with making the consequential amendments, has added some portions by way of

interpolation and additions which are not sustainable. Thus by making such interpolation and additions, the respondent wants to make an enquiry in

the E.P, regarding the impleadment of L.R of the decree holder which is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

impermissible. It is also a gross abuse of process of the Court and the act

of deliberately sneaking in the pleadings without the permission of the court and thus gaining an unfair advantage over the litigant on the other side

also amounts to playing a fraud on the court. In Gurdial Singh and Others Vs. Raj Kumar Aneja and Others, it is held that once a pleading filed, it

becomes a part of the record of court, it cannot be modified, substituted, amended or withdrawn without the leave of the court. Further, an

amendment to pleadings can be done only by making a prayer through a petition filed under VI Rule 17 of CPC stating exactly what is proposed

to be omitted from, substituted, altered in, or added to the original pleading, otherwise court cannot exercise its power and discretion of permitting

amendment effectively. Therefore, the amendments carried out by the respondent in the E.A., and also the prayer of the application in extenso

without leave of the court and concealing and camouflaging the interpolations under the grab of a consequential amendment is unlawful and illegal

as has been held in Gurdial Singh and Others Vs. Raj Kumar Aneja and Others, since new plea cannot be permitted to be introduced in the guise

of a consequential amendment and the same is liable to be struck down.

Para 12. In Ravinder Kaur v. Ashok Kumar and Anr. reported in 2002(8)SCC 289 also the Honourable Apex Court while dealing with a similar

situation, held that u/s 47 CPC an issue that was never raised in the original ejectment proceedings or in the RCA or Revision cannot be permitted

to be re-agitated in the execution proceedings. It is also categorically observed in the said decision that raising a dispute in regard to boundary of

the suit property is only a dispute in regard to boundary of the suit property is only a bogey to delay the eviction by the abuse of the process of the

Court. Courts of law should be careful enough to see through such diabolical plans of judgement debtors to deny the fruits of the decree obtained

by them. These types of errors on the part of the judicial forums only encourage frivolous and cantankerous litigation causing law''s delay and

bringing bad name to the judicial system.

Para 13. In Arthur Theodore James and 2 Ors. v. Mrs. Hanna Rosaline and 4 Ors. reported in 1999(1) L.W. 222 it has been held by this Court

as follows:

Whatever may be the source of information, if this Court is satisfied that great

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

prejudice has been done to a litigant and that injustice is being

perpetuated this Court is duty bound to take necessary action to prevent repetition of the same. After all, courts are there only to do justice

between the parties, and the contention that that could be done only in a particular proceeding, is only a technical argument which also amounts to

obstruction to the cause of administration of justice. Section 151 CPC and Article 227 of the constitution give ample powers to courts to see that

the Subordinate Courts act within their limits and no party to a litigation also abuses his position as a litigant through process of Court. If

applications after applications are filed in order to prevent a successful decree holder from getting the fruits of the decree and the court also

supports such action by entertaining such applications, it will only mean that the Court is also impliedly perpetuating the abuse of process. If a court

does not prevent such abuse, it ceases to be a court of law.

Para 14. In another decision reported in 2002(2) MLJ 433, again this Court reiterated as follows:

This is a case where the judgment debtor and his kith and kin have been successfully keeping the owner of the property at bay by adopting

frustrating tactics. If courts do not step in and deal with a situation like this firmly, the very purpose for which courts of law have been constituted

would be defeated.

Para 15. In Alagar @ Savugan .v. A. Baluchami reported in 1999 (2) MLJ 395, it has been held as follows:

This is a case where the decree holder had been driven from pillar to post by the machinations of the respondents and they have been successfully

thwarting his efforts by some proceedings in court. I am clearly of the view to get away with what they have been doing. The order of the lower

court dismissing the application for removal of obstruction is clearly erroneous and cannot be sustained.

Para 16. All the above decisions are squarely applicable to the facts of the present case, as in the present case on hand also, the decree holder

could not enjoy the fruits of the decree even after 25 years by the dilatory tactics of the respondent who has been filing application or appeal or

revision and has been successfully thwarting on the property and the court cannot shut its eyes to such recalcitrant litigants otherwise it would

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

amount to impledly perpetuating the abuse of process and if a court does not prevent such abuse, it ceases to be a court of law. In these

circumstances, I am of the view that the very application filed u/s 47 CPC in the peculiar facts and circumstances of the case is not maintainable

and the same has to be rejected following the dictum of the Honourable Supreme Court in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman

and Others, . Consequently, the trial court shall proceed with the Execution Petition and see to it that the decree holder is put in possession of the

property as expeditiously as possible since already two decades have gone by after the eviction order has been granted.

19. Thus, this Hon''ble Court had over ruled all the contentions that has been taken at the end of the judgment debtor and struck off the application

filed by the judgment debtor u/s 47 of C.P.C and directed the executing Court to proceed with the E.P. for early delivery of possession of the

property to the decree holder. Thereafter, the judgment debtor seems to have preferred an appeal before the Hon''ble Apex Court in SLP (C) No.

8125 of 2007 and the same was dismissed by the Hon''ble Apex Court by its order dated 14.05.2007.

20. Thus, the entire grounds raised at the end of the judgment debtor has been considered by this Court and has rejected the same and directed

the Court below to proceed with the E.P. for delivery of the property to the decree holder. Even, thereafter, the judgment debtor has taken every

step to stall the delivery of possession. He has given list of 10 witnesses to examine on his side in the execution petition. The Court below ought not

to have entertained the list of witnesses without the reason being assigned for examining those witnesses. On an eviction order obtained by the

decree holder and when the same is sought to be executed, several grounds have been raised in the application u/s 47 of C.P.C and when the

same has been struck off by this Court, it is not known for what reason the judgment debtor wants to examine 10 witnesses in the execution

petition. It is a common knowledge that the executing Court cannot go beyond the decree. In spite of the same, the Court below had ordered

summons to all the witnesses. The judgment debtor was able to examine only one witness out of 10 witness and the evidence in respect of

witnesses 2 to 7 were closed on the ground that in spite of the summons, they have not appeared before the Court below for giving evidence. With

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

regard to the two witnesses, they could not be served. Thus, the Court below has given sufficient opportunity to the judgment debtor and in spite

of the same, the judgment debtor has not taken any earnest steps in examining those witnesses.

21. The above narration of the facts will clearly prove that the judgment debtor is able to stall the delivery of possession on one pretext or other or

on one reason or other. It is obvious that he is trying to prevent the decree holder from enjoying the fruits of the decree.

22. Yet another contention of the learned Counsel appearing for the judgment debtor is that the eviction petition itself is not maintainable, in view of

the fact that because the judgment debtor is running an educational institution and there is a prohibition from initiating eviction proceedings in

respect of the buildings, where educational institution is being run. The said submission of the learned Counsel cannot be countenanced for more

than one reason.

(a) First of all, the judgment debtor is not running any educational institution as on date. In fact, an Advocate Commissioner, who was been

appointed in the matter has found that the judgment debtor is not running any educational institution in the premises, which has been let out.

(b) Secondly, it is not the case of the judgment debtor that the educational institution which was being run by him was recognised by the

Government. Absolutely, the judgment debtor has not produced any document to show that for running the educational institution any order of

recognition ordered by the Government. In Ramachandran v. Kamalchand Baid 1979 L.W.(S.N.) 37, it has been held that in order to apply the

provision of Section 10(4)(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended, the requisites to be satisfied are:

There must be letting, it must be for use as an educational institution and the building should still be used for that purpose, and, further, the

institution should be one that has been recognised by the Government or any authority empowered by the Government in that behalf, and lastly,

such recognition must continue at the relevant date.

(c) As stated already, it is not the case of the judgment debtor that the building is still used for the educational purpose and that it has been

recognized by the Government or any authority empowered in that behalf and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

such recognition continues as on date. Hence, the contention of the

learned Counsel in this regard has to be rejected in toto.

23. The learned Counsel appearing for the decree holder relied on a decision reported in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman

and Others, , wherein the Hon''ble APex Court has held that the executing Court cannot go beyond the decree and Paragraph 6 of the said

judgment is usefully extracted hereunder:

Para 6. A court executing a decree cannot go behind the decree; between the parties or their representatives it must take the decree according to

its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in

appeal or revision, a decree even if it be erroneous is still binding between the parties.

24. However, the learned Counsel appearing for the judgment debtor relied a decision reported in Sunder Dass Vs. Ram Prakash, . More

particularly, Paragraph 3 of the said judgment, which is reproduced hereunder:

Para 3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is

one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court

passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence

of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can

be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings.

The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the

executing court would not incur the reproach that it is going behind the decree being null and void, there would really be no decree at all.

25. Yet another decision that has been cited by the learned Counsel appearing for the judgment debtor which is reported in V.S. Alwar Ayyangar

Vs. Gurusamy Thevar, , Paragraph 5 of the said judgment is usefully extracted hereunder:

Para 5. As for Mr.Alagar''s argument, it is no doubt fundamental that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

executing Court cannot go behind the decree. But it is also fundamental

that it is open to a judgment debtor to resist execution on the ground that the judgment against him is a nullity. The executing Court can very well

decline to execute a decree if it is satisfied that it is a nullity. When it does so, it is not to be regarded as going behind the decree, for the simple

reason that there is no decree at all to go behind. The stand of the judgment debtor in this case is that in view of Section 16-A, the decree for

injunction is a nullity.

By citing the said judgments, learned Counsel appearing for the Judgment-debtor contended that since the decree obtained in the eviction

proceedings is non-est in law, the same cannot be allowed to be executed. But, I am unable to accept the contention raised by the judgment

debtor since he has not pleaded and established that the decree of eviction is not valid and non-est in law.

26. The learned Counsel appearing for the judgment debtor made yet another submission, namely that since V.K.Jayalakshmi had filed the rent

control proceedings against the judgment debtor and later she died, the present decree holder cannot maintain the execution petition unless and

otherwise succession certificate is obtained by her.

27. In this connection, the learned Counsel appearing for the judgment debtor relied on the following decisions:

1. Muniappa Nadar and Others Vs. K.V. Doraipandi Nadar and Another,

2. Smt. Kariyamma and others etc. Vs. The Assistant Commissioner and Land Acquisition Officer,

3. Sangappa Mallappa Kuri Vs. Special Land Acquisition Officer, and

4. I. Basha Khan Vs. K. Selvaraj and Others,

28. I am unable to countenance the said arguments of the learned Counsel appearing for the judgment debtor for the following reasons:

(a) First of all, in pursuant to the eviction order obtained by V.K. Jayalakshmi, she had filed E.P and the present decree holder had filed

application to implead herself as legal representative and the same has been allowed by the executing Court. In view of the said position, the

present decree holder need not obtain any succession certificate. Even the judgments referred to by the learned Counsel appearing for the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

judgment debtor makes this position very clear.

(b) Secondly even during the life time of original decree holder, she has laid the execution petition and after her death, the present decree holder is

prosecuting the said execution petition, as legal representative of the original decree Holder. Hence, there need be no necessity to obtain

succession certificate. In I. Basha Khan Vs. K. Selvaraj and Others, , the learned Judge of this Court held so and Paragraph 3 is usefully extracted

hereunder:

Para 3. The execution proceedings cannot abate on the death of the deceased decree holder, in view of Order 22 Rule 12 of the Code of Civil

Procedure, and the legal representatives can therefore continue the proceedings without filing separate Execution petition by substitution themselves

u/s 146 and Order 21, Rule 12 of the Code. Only if they want to file a fresh application they have to comply with the requirement of Section 214

of the said Act.

(c) Furthermore, the judgment debtor had not preferred any appeal against the order passed by the executing Court in E.A. No. 48 of 2003

allowing the application preferred by the present decree holder for impleading herself as legal representative. In fact, the decree holder filed a

consequential application for amendment in E.A. No. 115 of 20203 and the same was allowed on 07.10.2003. Review application filed against

the said order by the judgment debtor along with an application to condone the delay was also dismissed. The present decree holder filed an

amended execution petition and the present judgment debtor had also carried out the amendment in E.A. No. 75 of 2002 which has been filed by

him u/s 47 of C.P.C. While so, the contention of the learned Counsel appearing for the judgment debtor that the present decree holder ought to

have obtained succession certificate and thereafter she should have impleaded herself as legal representative in the execution petition is for fetching.

29. Yet another contention that has been raised at the end of the judgment debtor is that the mere dismissal of SLP without giving any reason will

not merge with the order of this Court. Furthermore, the learned Counsel submitted that mere dismissal of the S.L.P does not mean, the impugned

judgment is affirmed and hence does not operate as a resjudicata. To this preposition, the learned Counsel appearing for the judgment debtor

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

relied on a decision reported in 2000(2) UJ 1158 (SC) (Kunhayammed and Ors. v. State of Kerala and Anr.). The question that came

consideration before the Hon''ble Apex Court was that where the summary dismissal of the SLP will take away the right of the High Court,

Tribunal or Forum to review its own order if grounds for exercising of review jurisdiction are shown to exist. In that circumstances, the Hon''ble

Apex Court has held that mere rejection of SLP does not take away the jurisdiction of the Court, Tribunal or Forum, to revise its own order, if

grounds for exercising of review jurisdiction are shown to exist because of dismissal of S.L.P., which does not contain any reason.

30. Hence, the judgments cited by the learned Counsel appearing for the judgment debtor may not be of any relevance for the purpose of this

case. In the case on hand, this Court had on an earlier occasion struck off the defence taken by the judgment debtor in his application u/s 47 of

C.P.C and the SLP that has been filed by the judgment debtor has been dismissed in limini. Though the said order will not merge with the order of

this Court, the order of this Court still stands good, since, the order of this Court has not been reviewed later.

31. The other judgment that has been cited by the learned Counsel appearing for the judgment debtor is reported in AIR 2004 S.C.1084 (Ramnik

Vallabhdas Madhvani and Ors. v. Taraben Pravinlal Madhvani). That is the matter, where against the preliminary decree, SLP was filed and the

same was dismissed. Thereafter, final decree was passed by the Hon''ble High Court and the same has been appealed before the Apex Court. In

those circumstances, the Hon''ble Apex Court held that it can go into the legality and the correctness of the impugned judgment including the rate of

interest awarded in the preliminary decree. But the case on hand is entirely different. As stated already, the defence taken by the judgment debtor

u/s 47 of C.P.C has been struck off by this Court and the S.L.P has also been dismissed. Thus, the judgments cited by the learned Counsel

appearing for the judgment debtor has no relevance as far as the case on hand.

32. However, one thing that has to be seen while considering the Civil Revision Petition filed by the decree-holder namely, the decree holder has

come forward with the revision in C.R.P. No. 3699 of 2007 against the order of the learned District Munsif, Alandur dated 27.06.2007 in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

accepting the list of witnesses and ordering issuance of process for those witnesses. The said Civil Revision Petition has been filed questioning the

said order after the summons have been sent to the witnesses and one witness was examined. Furthermore, after the closing of the evidence on the

side of the judgment debtor, in view of the non appearance of the witnesses 2 to 7, the judgment debtor filed the application in E.A. No. 136 of

2007 to re-open the list of witnesses 2 to 7 and an order has been passed on 24.09.2007 rejecting the claim of the judgment debtor to re-open

the list of witnesses 2 to 7 and allowed the petition in respect of re-open of the 10th witness5 alone. The said order reopening the case for the

purpose of examining 10th witness is not challenged by the decree Holder. Hence, I am unable to set aside the order of the learned District Munsif,

Alandur dated 27.06.2007 in E.P. No. 12 of 1993 accepting the list of witnesses filed by the judgment debtor ordering issue of process for those

witnesses at this stage. Hence, I am constrained to take the view that the said witness (10th witness) has to be permitted to be examined on the

side of the judgment debtor.

33. In view of the stated position, I uphold the order of the learned District Munsif, Alandur dated 24.09.2007 in E.A. No. 136 of 2007 in E.P.

No. 12 of 1993, rejecting the claim of the judgment debtor to re-open the list of witnesses 2 to 7 and allowing only in respect of re-opening the list

witness No. 10 alone and summons to be issued to the said witnesses. The judgment debtor shall not be permitted to examine any other witness,

except witness No. 10. Thus, C.R.P. No. 3699 of 2007 is disposed of with the direction to the learned District Munsif, Alandur to permit only the

list witness No. 10 alone to be examined on the side of the judgment debtor and he shall not be allowed to examine any other witness.

34. In fine, I am constrained to pass the following order in all the revisions.

1. The order of the learned District Munsif, Alandur made in I.A. No. 2737 of 2007 in O.S. No. 556 of 1997 dated 06.09.2007 stands confirmed

and the revision in C.R.P. No. 3942 of 2007 filed at the instance of the judgment debtor stands dismissed.

2.The order of the above learned District Munsif made in E.A. No. 136 of 2007 in E.P. No. 12 of 1993 dated 24.09.2007 stands confirmed and

the revision in C.R.P. No. 3478 of 2007 stands dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…

3. C.R.P. No. 3669 of 2007 filed against the order of the said learned District Munsif dated 27.06.2007 in E.P. No. 12 of 1993 in R.C.O.P. No.

4 of 1978 is ordered on the following terms:

a. In view of the order that has been passed in C.R.P. No. 3478 of 2007 confirming the order of the learned District Munsif in refusing to entertain

the re-opening of the witnesses 2 to 7 and entertaining only the examination of witness No. 10, who cited in the list of witnesses, he alone should

be examined on the side of the judgment debtor.

b.The judgment debtor shall produce the said witnesses or take summons for appearance of the said witnesses on 24.04.2008 before the learned

District Munsif, Alandur and on the same day, the said witnesses should be examined on behalf of the judgment debtor and cross examined on

behalf of the decree holder.

c. After the examination of the said witnesses, the learned District Munsif is directed to pass orders in the execution petition on or before

30.04.2008.

d. The learned District Munsif, Alandur shall not permit the decree holder or the judgment debtor to examine any other witnesses on his side.

e. If the witness No. 10 cited in the list of witnesses does not appear on 24.04.2008, no more chance shall be given to the judgment debtor and

that the evidence on his side shall be closed and thereafter as stated already order shall be passed by the learned District Munsif, Alandur on or

before 30.04.2008.

f. The learned District Munsif, Alandur shall not entertain any other application either on the side of the judgment debtor or on the side of the

decree holder in the said E.P. No. 12 of 1993.

35. With the above directions, the Civil Revision petitions are ordered accordingly. No costs. Consequently, connected M.Ps. are closed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mrs-n-krishnaveni-appellant-hash-pl…