

(2007) 04 MAD CK 0074

In the Madras High Court

Case No : CRP (PD) No's. 1718 to 1719 of 2006, Tr. M.P. No. 39 of 2007 and
M.P. No's. 1/06 and 1/07

Mrs. N. Krishnaveni

APPELLANT

Vs

P.L. Narasimha Rao, Secretary, Bharati Canvent School

P.L. Narasimha Rao, Secretary, Bharati Canvent School
Vs V.K. Jayalakshmi (deceased) and Mrs. N. Krishnaveni

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 142
Subordinate Courts Act — Section 13(3)

Citation : (2007) 04 MAD CK 0074

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : G.R.S. Chandra Rao and R. Srinivas, for the Appellant; R. Srinivas
and G.R.S. Chandra Rao, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—Both the Civil Revision Petitions are filed under Article 227 of the Constitution of India against the order dated 7.6.2002 and 24.8.2006 made in E.A.No 75 of 2002 in E.P.No: 12 of 1993, in RCOP.No:4 of 1978, passed by the learned District Munsif, Alandur, by which the learned Judge permitted the respondent/judgement debtor to file the petition u/s 47 CPC by taking on file the said petition and issuing of notice and also countenanced the amendments carried out by the respondent without permission of the court.

2. The Transfer CMP is filed to withdraw the very E.P.No:12 of 1993 in RCOP. No. 4 of 1978 pending on the file of the District Munsif, Alandur and transfer the same to the District Munsif Court, at Poonamallee to be tried as joint trial along with O.S. No. 556 of 1997 pending on the file of the same District Court, Alandur.

3. The brief facts of the revision petitioner's case in both the CRPs are as follows:

The petitioner's mother leased out the petition mentioned property to the respondent herein for residential purpose in the year 1967 for a monthly rent of Rs. 72.50/=. The respondent paid rents regularly till 1971 and thereafter defaulted totally. The petitioner's mother filed RCOP No. 4 of 1978 in which an ex parte order of eviction was ordered on 18.6.1982. This order has been confirmed by the Subordinate Court, Chengalpattu and by this Court and the order has become final even as on 26.2.1985. However, the respondent by adopting dilatory tactics is dragging on the Execution Petition No. 12 of 1993 filed by the petitioner's mother. Subsequently the petitioner's mother expired and the present petitioner, who is her daughter, has been brought on record as legal representative. The respondent filed E.A. No. 75 of 2002 in the E.P., u/s 47 CPC on frivolous and unsustainable grounds and is challenging the order of eviction passed against him. According to the revision petitioner, the respondent has included new grounds in the E.A., and introduced the same in the petition without the permission of the Court. He has now filed a proof affidavit incorporating the pleading introduced by the unlawful amendment. According to the revision petitioner the E.A. No. 75 of 2002 is unsustainable and an abuse of process of law and the Executing Court has also inadvertently countenanced the same and caused a miscarriage of justice.

4. For an easy reference of the history of the case, the following dates and events are given:

DATES EVENTS 20.3.1946 Property concerned was purchased by petitioner's grand father 18.11.1966 Petitioner's grand father died 23.5.1967 The property was leased out to the respondent by the petitioner's mother V.K. Jayalakshmi 1971 Respondent stopped payment of rent 23.1.1978 RCOP.No:4 of 1978 was filed in the DMC, Poonamallee 11/1/79 Order of eviction was passed 15.12.1979 Order of eviction was set aside and RCOP was remitted back to the trial court by order made in the CMA. No. 16 of 1979 18.6.1982 An ex parte order of eviction was passed in the RCOP 14.7.1982 Respondent filed I.A. No. 89/82 to set aside the ex parte order of eviction 18.9.1982 I.A. No. 89 of 1982 was dismissed by the trial court on merits 9/11/83 Subordinate Court, Chengalpatu in RCA. No. 36 of 1982 confirmed the order passed in I.A. No. 89 of 1982 26.2.1985 The order of the Sub Court, Chengalpattu was confirmed by the High Court, Madras in CRP. No. 5584 of 1983. 17.2.1986 Petition to condone the delay to restore CRP. No. 5584 of 1983 was dismissed by this Court in CMP. No. 6912/1985. 8.10.1991 Petitioner filed EP. No. 32 of 1991 in the DMC, Poonamallee. 1993 The said EP was transferred to DMC, Tambaram and respondent filed E.A.No. 11/93 14.2.1994 EP was dismissed for default and EQ. No. 11/93 was allowed 19.1.1995 EA.17/94 to restore the EP was dismissed 9/12/98 In CRP. No. 1388/95 the order made in EA. No. 17/94 was set aside. 2002 EA.No11 of 1993 was dismissed 12/3/02 Respondent filed E.A. No. 75 of 2002 7/6/02 The Executing Court takes EA. No. 75 of 2002 to file and ordered notice to the respondent/deed holder 25.9.2002 V.K. Jayalakshmi, the revision petitioner's mother died 13.8.2003 Revision petitioner was impleaded as LR of

the deceased decree holder 2/1/04 Respondent carries out amendment in the E.A.75/2002 23.8.2006 Respondent files amended petition copy in EA.75/02 24.8.2006 Respondent files amended petition copy 17.10.2006 Respondent files proof affidavit in EA.75/02.

5. The above dates and events would disclose the long checkered background of the RCOP case and also reveal the dilatory tactics of the respondent in dragging on the execution proceedings and is using the process of law as a tool of oppression and deceit to achieve his sinister motives. From the dates and events, it is clear that in the RCOP the respondent filed a counter mainly objecting that he is not the tenant and the school run by him was the tenant; the entire property was not leased out to him, but only some rooms were leased and other land were occupied by the school and superstructure was constructed on its own; and the petitioner is not entitled to claim property for her own occupation etc., Initially an order of eviction has been passed on 11.11.1979 in the RCOP and the same was set aside and remitted for trial by the Sub Court, Chengalpattu in the appeal. Once again due to the non appearance of the respondent, an ex parte order was passed on 18.6.1982. The I.A.89 of 1992 filed to set aside the above ex parte order of eviction was dismissed on 18.9.1982 on merits. The said dismissal was challenged in Appeal before the Subordinate Court, Chengalpattu and also in Revision before this Court in CRP.No:5584 of 1983 which have confirmed the order of eviction. The respondent has not filed any appeal against the order of this Court and therefore the order of eviction has become final. Thereafter, the petitioner filed E.P. No. 12 of 1993.

6. In the Execution Petition, the respondent herein filed E.A. No. 75 of 2002 praying that an enquiry be held regarding the ex parte order of eviction dated 18.6.1982 as the very ex parte order is invalid and nullity and to dismiss the E.P., as not maintainable and without jurisdiction.

7. According to the learned Counsel for the revision petitioner, the very taking on file of the E.A. No. 75 of 2002 filed by the respondent itself is not sustainable since the Executing Court cannot look into the validity of the decree. The learned Counsel rightly relied on the judgment of the Hon''ble Supreme Court reported in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, , wherein it has been laid down that, a court executing a decree cannot go behind the decree and has to accept the decree as it is even if it is erroneous in law or fact. Again where a decree is a nullity or where the court passing the decree lacks, inherent jurisdiction to pass the decree, the executing court may entertain objections against the execution of the decree. However, such nullifying factor or lack of jurisdiction has to be apparent on the face of record and if any enquiry is needed to prove the same, and it is not apparent on the face of record, the executing court will have no jurisdiction to entertain the objection and hold an enquiry for the said purpose. Further, where the objection does not appear on the face of record and requires examination of questions raised and decided at the trial or which could have been, but have not been raised, then the executing court will

have no jurisdiction to entertain the objection.

8. The main objections raised in the E.A., by the respondent are as follows:

The respondent is not the tenant but the school is the tenant; The school was leased with only three rooms and 39 cents of lands were occupied by evicting the hut dwellers from the poramboke lands; However, the decree holder is trying to take possession of the entire land; An educational institution is being run and therefore the petitioner cannot claim for her own occupation; RCOP filed by one V.R. Raghavan, alleged POA of the landlady, but on V.V. Ramamoorthy deposed as POA; Petitioner cannot have three different power agents at three different stage of proceedings; Evicting the educational institution by the petitioner is not permissible u/s 13(3)(b) of Act 18 of 1960; The EP and O.S.No:556 of 1997 are filed by A.K.Sitaraman as the alleged third power agent of petitioner's mother and all of them at different stage have without the knowledge of the landlady have attempted to grab the land from the respondent; Therefore, the neither the deceased petitioner's mother nor the revision petitioner could file the EP for execution of the exparte order of eviction; and Impleading the petitioner as legal representative of the deceased decree holder is illegal and subject to material irregularities, since the alleged will itself is a fabricated and created document for that purpose.

9. Keeping in mind the proposition of law laid down by the Apex Court, if we look at the very grounds or objections raised in the application filed u/s 47 CPC (E.A. No. 75/2002), 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 EA 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.75/2002. 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 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.

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.75/2002 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.

11. It is also to be noted that even though the order of eviction is an ex parte order, unless the same is set aside it is also binding. In the present case the ex parte 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 before the court. In the 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 interpolations and additions, the respondent wants to make an enquiry in the E.P, regarding the impleadment of L.R of the decreeholder which is impermissible. It is also a gross abuse of process of the court and the act of deliberately sneaking in 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 or 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 garb 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.

12. In *Ravinder Kaur Vs. Ashok Kumar and Another*, also the Hon''ble 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 reagitated 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 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 judgment 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.

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 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.

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.

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 that the respondents should not be allowed 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.

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 amount to impliedly 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 Hon'ble 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.

17. As regards the Transfer CMP filed by the respondent/judgement debtor in both the CRPs, as stated earlier, it is also one of such attempt made by him to squat on the property and to avoid eviction. It is also pertinent to note that he has sought for transfer of the E.P. No. 12 of 1993 to the file of the District Munsif Court at Poonamallee for a joint trial along with O.S. No. 556 of 1997 which has been filed by the revision petitioner for a permanent injunction, since after filing of the E.P., the respondent started construction activities in the petition property. But the said suit is pending on the file of the same District Munsif Court, at Alandur for a joint trial along with E.P., as has been directed earlier by this Court in the earlier Tr.CMP.No:8791/1999 and in fact this Court directed the disposal of the matter within a period of four months from the date of receipt of its order dated 1.11.1999. Without cooperating for the early disposal of the matters, the respondent only filed the application u/s 47 CPC on 12.3.2002. Therefore, this Transfer CMP filed with ulterior motive of only to drag on the proceedings cannot be entertained and the same is liable to be dismissed.

18. In the result, both the CRPs are allowed, directing the Executing Court to strike off the application filed u/s 47 CPC and to proceed with the execution petition and for early delivery of possession of the property to the revision petitioner. Consequently, Tr.CMP and M.P.No:1/2007 are also dismissed. M.P. No. 1 of 2006 is closed. No costs.