

(2010) 06 MAD CK 0209

In the Madras High Court

Case No : C.R.P. No. 3555 of 2009 and M.P. No. 1 of 2009

N. Sunder Rao

APPELLANT

Vs

N. Prema Kumari and Others

RESPONDENT

Date of Decision : 02-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 — Section 29, 3

Citation : (2010) 06 MAD CK 0209

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Thiagarajan for D. Ashok Kumar, for the Appellant; T. Viswanatha Rao, for N. Srinivasulu, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Civil Revision Petitioner/Respondent/Judgment Debtor has filed this Civil Revision Petition as against the order dated 14.10.2009 made in E.P. No. 1916 of 2002 in O.S. No. 8078 of 1986 passed by the Learned X Assistant Judge, City Civil Court, Chennai.

2. The Executing Court while passing order in E.P. No. 1916 of 2002 in O.S. No. 8078 of 1986 on 14-10-2009 has among other things, observed that "...the contentions raised by the Learned Counsel for the Respondent/Judgment Debtor and the existence of superstructures have already been taken into consideration in the Suit, Appeal and in the S.L.P., and they cannot be agitated before this Court of Execution. Hence, this Petitioner/Decree Holder is entitled for the delivery of possession as prayed for" and resultantly, allowed the Petition and ordered delivery by 14.12.2009.

3. According to the Learned Counsel for the Revision Petitioner/Judgment Debtor, the order passed by the Executing Court is against law and weight of evidence and probabilities of the case and that, indeed the Executing Court has not taken note of the subsequent developments in connection with the allotment that was

originally granted to the Decree Holder.

4. It is the further contention of the Learned Counsel for the Revision Petitioner that the Executing Court had failed to see that the land in question is a notified area, as per Section 3 of the Tamil Nadu Slum Clearance Board Act and therefore, any eviction can be made only after due and prior permission from the authorities concerned and whereas, no such permission was sought for in the present case.

5. Continuing further, the Learned Counsel for the Revision Petitioner submits that in the event of notification u/s 3 of the Tamil Nadu Slum Clearance Board Act, the Petitioner is entitled to an alternative accommodation as per Section 29 of the Tamil Nadu Slum Clearance Board Act; but no such opportunity was given to the Petitioner.

6. Besides the above, the Learned Counsel for the Revision Petitioner contends that the issue of patta in favour of one Singiah for the land in occupation of the Petitioner is highly irregular and similarly, the said Singiah was issued with similar patta relating to the land at Karimedu Colony and therefore, the attitude of the said Singiah in availing the patta for two sites while a person is entitled to one patta alone and this aspect of the matter, was not taken note of by the Trial Court in a real perspective.

7. According to the Learned Counsel for the Revision Petitioner, recently on a complaint to the District Collector, action was initiated by the District Collector relating to the issue of patta to the said Singiah as the Government felt that at the free distribution of patta, there was an impersonation and the patta as issued to Singiah was wrongly given and therefore, the Respondents 1 to 5 deserve no sympathy. Hence, he prays for allowing the Civil Revision Petition in the interest of justice.

8. Advancing his arguments, the Learned Counsel for the Revision Petitioner submits that the Collector in his proceedings dated 5.2.1985 has issued an order, directing the Decree Holder to show cause as to why his allotment should not be cancelled and consequently, why his allotment should not be extended to the Petitioner and that, the said communication itself was a self-explanatory one and that, as a matter of fact, on 30.10.2008, the Collectorate had directed the Local Tahsildar to cancel the patta that was issued to Singiah and under such circumstances, the Execution Petition cannot be sustained and therefore, the order of delivery passed by the Executing Court was liable to be set aside.

9. In response, the Learned Counsel for the Respondents submits that the deceased Plaintiff Singiah filed O.S. No. 8078 of 1986 praying for a relief of declaration and recovery of possession which was decreed on 20.9.1989. Further, A.S. No. 68 of 1990 was dismissed on 26.3.1991. The Second Appeal No. 1519 of 1991 was also dismissed on 2.8.2002. Later, SLP No. 455 of 2003 filed by the Revision Petitioner/Judgment Debtor was dismissed on 10.7.2003. Therefore, the Decree passed in O.S. No. 8078 of 1986 dated 20.9.1989 has become final and

conclusive and the Legal Heirs of the Decree Holder viz., the Respondents are entitled to claim the delivery of possession in law and the Executing Court taking into account all these aspects, on 14.10.2009 passed an order of delivery by 14-12-2009 in the main Execution Petition.

10. It is to be noted that the Petition for Special Leave to Appeal (Civil) No. 455 of 2003 filed by the Revision Petitioner as against the Deceased Decree Holder was dismissed by the Hon''ble Supreme Court on 10.7.2003. The said SLP arose out of the Judgment of this Court dated 2.8.2002 in S.A. No. 1519 of 1991.

11. A perusal of the letter dated 30.10.2008 of the Personal Assistant to the District Collector, Chennai-1 addressed to the Tahsildar, Fort-Tondiarpet Circle, Chennai-9 with a copy being marked to the Revision Petitioner (Judgment Debtor) shows that the concerned patta file relating to Singiah was not sent and that no details were furnished as to the place where the Legal Representatives of the said Singiah were residing and also that no death certificate of Singiah for his death on 1.11.2003 was not furnished. It was further informed in the said letter that no recommendation was made to cancel the patta granted to Singiah. Added further, the reasons for cancellation of patta with report of the Tahsildar was directed to be sent to the Collector's office in the said letter dated 30.10.2008. Therefore, it is quite clear that as on date the patta issued to Singiah was not cancelled by the competent authority concerned.

12. It is brought to the notice of this Court that Section 47 Application under the CPC in E.A. No. 495 of 2005 filed by the Petitioner was dismissed on 2.9.2008 and the Revision Petitioner filed C.R.P. No. 3831 of 2008 as against the order made in E.A. No. 495 of 2005 and the same was dismissed by this Court on 11.12.2008.

13. It is out of place to point out that this Court in its Judgment dated 2.8.2002 in S.A. No. 1519 of 1991, at para 7 has observed that "the Appellant has produced no evidence to show that the suit property is "a slum area" and it is also evident from the pleadings as well as the oral evidence that this has never been the case". Thus, it is clear that the Revision Petitioner who filed the Second Appeal, as mentioned supra, has failed in his endeavour and even the Petition for Special Leave to Appeal (Civil) No. 455 of 2003 was dismissed on 10.7.2003 by the Hon''ble Supreme Court.

14. The Respondents' father Singaiah died on 1.11.2003 and they have been arrayed as parties as Legal Representatives in E.A. No. 2985 of 2004 and also they have been brought on record in the main Execution Petition. Admittedly, the order passed in E.A. No. 2985 of 2004 (Impleading Petition) has not been challenged by the Revision Petitioner before the higher forum and as such, the said order binds the petitioner in law.

15. Also, the Respondents have filed Legal Heir Certificate to substantiate their stand before the Executing Court. The property has been assigned to the father of the Respondents viz., Singiah by the Collector of Madras and as on date, the

assignment patta stands in their father's name and the said patta has also been marked as a document in the suit. In fact, the Revision Petitioner/Judgment Debtor has no manner of right in the property. The present Civil Revision Petition filed by the Petitioner is a third one before this Court. The Revision Petitioner has successfully dragged on the Execution Proceedings for more than nine years.

16. In law, a successful party or his Legal Heirs or the Representatives do have the right to enjoy the fruits of the Decree. It is to be borne in mind that a litigation is immortal. But the litigant is a mortal.

17. It is well settled principle in law that an Executing Court cannot travel beyond the decree. In fact, the Executing Court has to lean towards the decree passed. In short, the Executing Court cannot go against the tenor and spirit of the Decree.

18. On a careful consideration of the respective contentions and since the Revision Petitioner/Judgment Debtor has remained unsuccessful upto the level of Hon"ble Supreme Court and on taking note of the attendant facts and circumstances of the case, this Court is of the considered view that the Respondents are entitled to the order of delivery of possession. Accordingly, the Executing Court has rightly allowed E.P. No. 1916 of 2002 on 14-10-2009 passing an order of delivery by 14.12.2009 and the same does not suffer from any material irregularity and patent illegality. The Civil Revision Petition sans merits and accordingly, fails.

19. In the result, the Civil Revision Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.