

(2009) 12 MAD CK 0100

In the Madras High Court

Case No : C.R.P. (N.P.D) No. 3744 of 2009 and M.P. No. 1 of 2009

Natesan (died) and Others

APPELLANT

Vs

Shanmugam (died) and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2010) 1 MLJ 1086

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : D. Ashok Kumar, for P. Vijayakumar, for the Appellant; T. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioners 1 to 6 are the legal representatives of the deceased defendant who has projected this civil revision petition before this Court as against the order dated 31.8.2009 in E.A. No. 463 of 2008 in E.P. No. 18 of 2006 in O.S. No. 1496 of 2006 passed by the learned District Munsif, Poonamallee in dismissing the application filed by the revision petitioners u/s 47 of Civil Procedure Code.

2. The Executing Court, while passing orders in E.A. No. 463 of 2008 on 31.8.2009 has inter alia observed that but the question whether the revision petitioners/Judgment Debtors have any right over the suit property and whether they can continue their possession over it. It is seen that these petitioners/Judgment debtors do not have any right over the land which is in their possession their earlier suit for specific performance has been dismissed. It is also not their case that they had been put in possession of the property pursuant to the sale agreement. The first respondent/decreed holder had purchased the property within the four boundaries specified in the suit. His vendor has not raised any objection on the ground that there was a larger extent of land available than what had actually been sold to the first respondent/decreed holder,

a person who is actually aggrieved but he has not chosen to raise a dispute. Hence it would not be open for the petitioners/Judgment Debtors who are total strangers to the property and who have trespassed into the property, to raise all these points and seek protection of their illegal possession. There is no merits in the claim of the petitioners/Judgment Debtors and resultantly dismissed the application with costs.

3. According to the learned Counsel for the revision petitioners, the impugned order of the Executing Court in E.A. No. 463 of 2008 dated 31.8.2009 is against law and weight of evidence and probabilities of the case and as a matter of fact, the Executing Court has not appreciated the facts set out in the affidavit in Execution Application to declare the decree null and void in a proper and prospective manner and in fact the Executing Court has travelling beyond the decree and Judgment in the main suit and indeed the respondents/decreed holders are only entitled to recover a small portion and they cannot claim larger portion of the land situated within those boundaries and that apart, the respondents/decreed holders have claimed the suit property only on the basis of Ex A1 sale deed dated 6.8.1979 and the Executing Court has not taken note of the observations of this Court made in paragraphs 10,11 and 13 of S.A. No. 338 of 2006 and the Executing Court has committed an error in ordering delivery of 27 cents which is beyond the decree and also observations of the Executing Court in considering the points held in paragraph 10 of A.S. No. 35 of 2005 which have been over ruled by this Court in S.A. No. 338 of 2006 are not in correct in law and therefore prays for allowing the revision petition in the interest of justice.

4. Per contra, the learned Counsel for the respondents/decreed holders submits that the decree passed in the main suit in O.S. No. 1496 of 1988 on the file of the learned District Munsif, Poonamallee has become final and in fact the matter has gone upto Second Appeal in S.A. No. 338 of 2006 and this Court has also by its Judgement dismissed the said second appeal on 21.8.2009 and in short, the revision petitioners cannot reopen the matter and agitate the issues once again which have been admittedly have a settled one and they cannot open a Pandora box once again and the respondents/decreed holders have filed the execution petition in E.P. No. 18 of 2006 before the Executing Court praying for issuance of an order, in directing the revision petitioners to quit and deliver the vacant possession of the schedule mentioned property etc and the respondents/decreed holders will be satisfied, if the decree is executed as per law and also that the Executing Court has taken into account of the facts and circumstances of the case in an integral fashion and has come to the right conclusion in dismissing E.A. No. 463 of 2009 and the same need not be interfered with by this Court sitting in revision and ultimately prays for dismissal of the revision petition.

5. This Court has paid its anxious consideration to the contentions advanced by the learned Counsel appearing for the parties and noticed their contentions.

6. Admittedly, in the main suit O.S. No. 1496 of 1988, a decree as been passed on 25.4.2005 as against the defendants 2 to 7 viz., the revision petitioners

before this Court. It is not in dispute that the revision petitioners/D2 to D7 are the legal representatives of late one Natesan who figured as a defendant in the said suit proceedings. In the Judgment in O.S. No. 1496 of 1988 dated 25.4.2005, the suit has been decreed in favour of the respondent/plaintiff, directing the revision petitioners/D2 to D7 to quit and deliver the vacant possession of the suit property after removal of any manner of structure or construction in the suit property within two months from this date and they also have been restricted by an order or permanent injunction from putting up any further construction in the suit property and also cause any damage to the trees in the suit property.

7. As against the said Judgment and decree passed in O.S. No. 1496 of 1988 by the trial Court, the revision petitioners/D2 to D7 have preferred A.S. No. 35 of 2005 before the Sub Court, Poonamallee and the same has been dismissed on 11.11.2005 by confirming the Judgment and decree passed by the trial Court in the main suit.

8. Being dissatisfied with the said Judgment and decree passed in A.S. No. 35 of 2005 dated 11.11.2005, the revision petitioners/D2 to D7 have projected second appeal in S.A. No. 338 of 2006 before this Court and the same has also been dismissed by this Court by its Judgment dated 21.8.2008.

9. Therefore, it is quite clear that the decree passed in O.S. No. 1496 of 1988 on the file of the District Munsif, Poonamallee has become final and the further proceedings in first appeal and the second appeal initiated by the revision petitioners have gone against them. However, the learned Counsel for the revision petitioners submits that the Executing Court while passing order in E.A. No. 463 of 2009 has erroneously observed that the decree holders" vendor will be actually aggrieved person but he has not chosen to raise a dispute and therefore it is not open to the revision petitioners/D2 to D7 who are total strangers to the property and have trespassed into the property to raise all these points etc and this observation of the Executing Court is an unwarranted one and therefore prays for allowing the civil revision petition in the interest of justice.

10. At this stage, it is useful to refer to the averments made by the revision petitioners/D2 to D7 in their E.A. No. 463 of 2009 inter alia to the effect that" their late father Mr. Natesan had entered into a sale agreement to purchase the property measuring to an extent of 88 feet east to west and 150 feet north to south, bounded on north by Sorancherri Road , south by Anaikattucherry Road, east by property belongs to Mr.Munusamy and west by Durai Mudaliyar"s property and according to the sale agreement, the revision petitioners" father inducted into possession of the entire property and the subject matter of the suit property is part of the entire property which is described in Item No. 1 schedule and therefore the respondents/decreed holders are entitled only a limited portion and not the larger portion and that the extent of the property is mentioned in Schedule I in Section 47 of CPC application viz., E.A. No. 463 of 2009 in which alone the decree holders have obtained a decree and further under the guise of

the decree , the respondents/decree holders want to usurp the property of the Judgment Debtors, who are all along enjoying the same even prior to the suit and in fact the respondents/decree holders also are not entitled to the vast extent of property and is only to 35 x 150 feet from the property of Munuswami Achari and therefore praying for a declaration that the decree passed in O.S. No. 1496 of 1988 is not executable and the same is an excessive one.

11. The respondents/decree holders have filed a detailed counter to E.A. No. 463 of 2009 among other things mentioning that the revision petitioners/D2 to D7 have filed a suit in O.S. No. 1216 of 1979 against the respondents/decree holders and his vendor Munuswami, praying for the relief of Specific Performance and the respondents/decree holders have filed O.S. No. 1126 of 1979 praying for the relief of permanent injunction and both the suits have been tried by the trial Court and ultimately O.S. No. 1216 of 1979 has been dismissed and the second appeal in S.A. No. 417 of 1984 has been filed by the revision petitioners/D2 to D7 and the same has also been dismissed and the revision petitioners/D2 to D7 have trespassed into the suit property as a result of which the respondents/decree Holders have preferred O.S. No. 1496 of 1988 praying for the relief of recovery of possession from the revision petitioners and for consequential permanent injunction and the same has been decreed in favour of the respondents/decree holders on 25.4.2008 and as against the said Judgement and decree in O.S. No. 1496 of 1988, A.S. No. 35 of 2005 has been filed and the same has been dismissed on 11.11.2005 and further S.A. No. 338 of 2006 has also been filed by the revision petitioners/D2 to D7 and the same has also been dismissed on 21.8.2008 and in the execution petition, on 26.9.2008, delivery has been ordered etc.

12. It is brought to the notice of this Court that E.P. No. 18 of 2006 is coming up for hearing before the Executing Court on 11.12.2009 for further proceedings.

13. On a careful consideration of the respective contentions and after going through the decree passed by the trial Court in O.S. No. 1496 of 1988 dated 25.4.2005 which has become final, this Court is of the considered view that the Executing Court cannot go beyond tenor and spirit of the decree passed by the trial Court and in fact the Executing Court has to act well within the parameters of the decree passed by the trial Court in as much as R1/Decree Holder has purchased the property within the four boundaries mentioned in the suit.

14. It is to be noted when the suit as to immovable property has been decreed and property is not definitely identified the defect is capable of being set right. The aim is that a successful party should not be deprived of the fruits of Decree. The exact description of decretal property can be identified by an Executing Court in the Execution Proceedings and a decree of a competent Court, should not as far as practicable be allowed to be defected in lieu of an accidental slip or omission as per decision Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, .

15. Since all the proceedings initiated by the revision petitioners/D2 to D7 right from the trial Court to the level of this Court have gone against them, now time is ripe for the Executing Court to proceed further in the execution proceedings in E.P. No. 18 of 2006 in terms of the decree passed by the trial Court and it is also brought to the notice of this Court that now the case is coming up for hearing before the Executing Court on 11.12.2009 and in the present case on hand, already bailiff has gone to the suit property and the matter is now pending for proceeding further in the matter. Under these circumstances, since the Executing Court is to act after perusing the report of the bailiff, this Court is of the considered view that the present revision petition filed by the revision petitioners/D2 to D7 is devoid of merits and hence the civil revision petition fails.

16. In the result, the civil revision petition is dismissed leaving the parties to bear their own costs. Consequently, connected M.P. No. 1 of 2009 is also dismissed. However, it is very clear that the Executing Court shall ensure that the decree passed by the trial Court in O.S. No. 1496 of 1988 is strictly executed in letter and spirit. If the Bailiff files his report and if the parties are aggrieved against the said report they can file their respective objections and the Executing Court can take into account of the same and pass orders on merits in a dispassionate fashion thereby completely and comprehensively thrashing out all the disputes in controversy so as to put at rest once and for all. Since the suit is of the year 1988 and the decree has been passed on 25.4.2005 by the trial Court and since on both sides, the original parties to the suit have expired and now the legal representatives are battling out the legal proceedings, and the present case is a classic example of the well known saying "Litigants are Mortals and the Litigation are Immortals." Considering the facts and circumstances of the case and the present stage of the execution proceedings, this Court, based on Equity, Fairplay , as a matter of prudence and even as an equitable remedy, directs the Executing Court to complete all formalities in execution proceedings and to bring the same to an end by passing appropriate orders on merits after providing opportunities to both parties, and to dispose of the Execution Proceedings, within a period of three months from the date of receipt of a copy of this Court and to report compliance to this Court without fail.