

(2015) 01 MAD CK 0200

In the Madras High Court

Case No : C.R.P. (NPD) No. 448 of 2005 and CMP Nos. 2819 of 2005, 1887 and 1888 of 2009 and 387 of 2010

S. Purushothaman and Others

APPELLANT

Vs

Chinni Subbaiah Chetty Charities and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 13, Order 21 Rule 14, Order 21 Rule 16, Order 21 Rule 17
Companies Act, 1956 — Section 23
Land Acquisition Act, 1894 — Section 11, 18

Citation : (2015) 01 MAD CK 0200

Hon'ble Judges : K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : V. Lakshmi Narayanan, for the Appellant; K. Hariharan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Kalyanasundaram, J.—This revision is directed against the order dated 20.12.2004 passed by the X Asst. Judge, City Civil Court, Chennai in E.A. No.3396 of 2004 in E.P. No.2234 of 2002 in O.S. No.1242 of 1983.

2. The petitioners are the defendants in O.S. No.1242 of 1983. The suit was filed by the respondents for recovery of possession. After contest, the suit was decreed on 27.11.2001. The judgment and decree of the trial court was confirmed by the first Appellate Court and by this Court. In the meanwhile, the decree holders laid an execution petition before the District Munsif Court, Poonamallee and the same was transmitted to the City Civil Court, Chennai and numbered as E.P. No.2234 of 2002.

3. In the execution petition, the decree holder filed E.A. No.3396 of 2004 under Section 151 of CPC for amendment of Door Number in columns 11 and 12 and the schedule of property and consequently in the warrant of delivery. In the

affidavit filed in support of the application, the decree holder has stated that the suit was filed in the year 1983 and the order of eviction was passed in the year 2001, thereafter the municipal area was annexed with the Chennai Corporation and due to long passage of time, the boundaries of the property and the door number has been changed and the old number 4 is changed into Door Nos. 5, 5A and 5B.

4. The application was opposed by the judgment debtor stating that the decree holder has to apply only before the trial court. Despite objection, the executing court allowed the application. Questioning the order, the present revision is filed.

5. Mr.V.Lakshmi Narayanan, learned counsel for the petitioners submitted that in the decree, extent and specific boundaries were given and any amendment can be made only by the trial court and not by the executing court. He has placed reliance upon the following judgments reported in -

(1) 1995 Sup.(4) SCC 582

(2) Union of India (UOI), Ministry of Defence and Another Vs. B. Mattu Ram Reddy and Others,

(3) Gajanand Sha and Others Vs. Dayanand Thakur,

(4) Maharaja Bahadur Ram Ranbijaya Prasad Singh Vs. Kesho Prasad Singh and Another,

(5) AIR 1935 Sind 26

(6) Smt. Sabitri Bala Mallick and Others Vs. Alak Ranjan Paul and Others,

(7) Bhoganadham Seshaian Vs. Budhi Veerabhadrayya (Died) and Others,

(8) Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another,

6. Per contra, Mr.K.Hariharan, learned counsel for the respondents submitted that the suit filed in the year 1983 was decreed only in the year 2001 and thereafter the appeals filed by the defendants were dismissed on 30.04.2004 and the execution petition was filed after 20 years of institution of the suit. Originally, the suit property lying in the municipal area and after induction into Chennai Corporation, the door number has been changed. The learned counsel further submitted that the identity of the property is not disputed by the judgment debtor in the counter. Further, during the pendency of the suit, the defendant has sold the property to the third party, the pendent lite purchaser is now objecting the execution of the decree. The learned counsel further submitted that the executing court has got power to amend the decree and that the judgment debtor is deliberately objecting the execution of the decree to prevent the decree holders from enjoying the fruits of the decree. Therefore, in the interest of justice, the court has allowed the petition which does call for any interference by this Court. The learned counsel has relied upon the following judgments reported

in -

- (i) Ravindran and Another Vs. Dandayudhan and Others,
- (ii) AIR 1987 Kerala 227
- (iii) Rajendra Prasad Agarwalla and Others Vs. Allahabad Bank and Others,
- (iv) Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another,
- (v) AIR 1981 Allahabad 16 V.58
- (vi) Govind M. Asrani Vs. Jairam Asrani and Another,
- (vii) Jagdish Narain Vs. Satish Chand Goswami and Others,
- (viii) Pratibha Singh and Another Vs. Shanti Devi Prasad and Another,
- (ix) Ravinder Kaur Vs. Ashok Kumar and Another,

7. First, I would like to consider the judgments relied upon by the learned counsel for the petitioners.

(A) In the judgment of the Hon''ble Supreme Court reported in Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another, , the land acquisition officer passed an award under Section 11 of the Land Acquisition Act. On reference, under Section 18 of the Act, the Reference Court passed an award and it was challenged by the State in an appeal. After dismissal of the appeal by the High Court, the claimants moved the reference court to amend the decree to enable them to get benefits under the Amendment Act. In those facts, the Hon''ble Supreme Court has held that under Order 41 Rule 1 and Section 151 CPC, the executing court or the reference court cannot go beyond the decree.

(B) In AIR 1995 Suppl. (4) SCC 582 [Tiko (Smt.) and others v. Lachman], an amendment petition was allowed by the executing court and the same was confirmed by the High Court. The Hon''ble Supreme Court, while dismissing the Special Leave Petition has held as follows -

3. Technically speaking the executing court could not go beyond the decree and hence the order passed by it is not assailable. But the executing court was also the court which could have amended the plaint and the decree. Counsel for the appellants states that although the decree was passed by Sub-Judge Class III, Sonapat, the very same court later exercised powers as Sub-Judge Class I and was executing the decree. It was, therefore, open to that court to treat the application as an application made before the decretal court and proceed to dispose of the same in accordance with law. (C) In Gajanand Sha and Others Vs. Dayanand Thakur, , the Patna High Court has held as follows -

The view which has been generally taken as to the meaning of O.21, R. 17 is that it is intended to deal with only formal amendments but for which the application

for execution or attachment will not be regarded as complete. For example, under R. 11 the judgment debtor is required to state such details as the number of the suit, names of the parties, the date of the decree, etc., in his application and if upon scrutiny of his application it appears that any of these details is missing in the application, the Court may give an opportunity to the decree-holder to remedy the defect. Similarly, what O.21, R. 13 contemplates is that the property which is sought to be attached should be described in such a way in the application for attachment as to show that the property is identifiable. If, therefore, there are found wanting in the description such details as are necessary for the proper identification of the property, the Court has full power to allow the decree-holder to remove the defect by supplying such details.. Rule 17, however was never intended in my opinion to enable the decree-holder to ask the Court to delete from his application a property which is fully described and to substitute in place thereof another property with a totally different description. In my opinion therefore the present case cannot be said to be covered by O.21, R. 17. (D) The same was taken in AIR 1935 Sind 26 [Mt.Memoo v. Md.Sidik]ENDLAWFINDER In Maharaja Bahadur Ram Ranbijaya Prasad Singh Vs. Kesho Prasad Singh and Another, , the Patna High Court has held as follows -

We are dealing with applications for amendment by which the decree holder seeks in the one case to execute his decree against a person who was not named in the application as presented to the Court within the period of limitation, in the other case to execute his decree against property which was not specified in the application as originally presented. I agree that it is impossible to hold that these prayers are prayers in continuation of the application already on the file. Had they been in the form of fresh applications they must fail as being time-barred. That being so, the decree-holder cannot be permitted to amend the application. For these reasons I fully agree that the appeals are to be dismissed. In Miscellaneous Appeal No. 379, I entirely agree with what has been said and have nothing to add. (E) In Smt. Sabitri Bala Mallick and Others Vs. Alak Ranjan Paul and Others, , it has been held as follows -

18. The above decisions unequivocally lay down the proposition that amendments to execution application can be allowed in the interest of justice, even if-and also at a stage when -- Order 21, Rule 17 cannot be invoked, by invoking the provisions of Sections 151 and 153 of the Code. The question however still remains whether an amendment which seeks to change the nature and character of the execution application, can be allowed. As stated earlier, in the instant case the execution application initially filed was for realisation of the decretal dues and by the amendment the decree-holder prayed for recovery of possession of the suit lands. There is no manner of doubt that the amendment completely changed the nature and character of the execution application; and it was not one of those amendments which was of a technical nature or by which the decree-holder sought assistance of the Court for its execution in a different mode other than in which it was earlier prayed for as in the decisions cited above.

21. As in my view the amendment that was allowed in the instant case, permitting the decree-holders to recover possession of the suit lands, has the effect of substantially altering the character of the execution proceeding which was for realisation of the decretal dues and since I am bound by the above decision, I must hold that the executing Court was not justified in allowing the application filed by the decree-holder on July 6, 1971 for amending the petition for execution by incorporating the prayer for recovery of possession of the suit properties. Consequently the order allowing the said application and all subsequent orders for such execution must be set aside. Since the first point of Mr. Hoy Choudhun succeeds the other questions involved in this appeal need not be decided. This judgment however will not preclude the decree-holder to file a fresh petition for execution, sought for by the amendment, if it would be otherwise maintainable in law.

8. In the judgments relied upon by the learned counsel for the respondent in (A) Kalipada Sinha v. Mahalaxmi Bank, reported in [AIR 1996 Calcutta 585], it is held as follows -

5. Mr. Sen on behalf of the applicant has taken us through various provisions of the Civil Procedure Code and has argued that execution proceedings are separate proceedings from a suit and neither Order 21, Rule 16 nor Section 151 or 153 of the Civil Procedure Code applies. The matter is set at rest by a Bench decision of this Court in, Rohini Kumar Roy Vs. Krishna Prosad Roy Choudury, . In that case, the question arose about the power of the court to amend an execution application. The very same objections were made, viz., that no such power existed in the Executing Court since the amendment could only be done under Order 21, Rule 16 or 17 and under no other provisions of law. The objections were overruled and it was held that the Court had inherent power under Section 151 and Section 153 of the Code of Civil Procedure to allow amendment of the petition for execution of the decree in the interest of justice. In our opinion, it would be a strange proposition that Section 23 of the Companies Act, 1956 should enable a company in its new name to continue any legal proceeding but that the executing court should be without any power to allow it to do so, in the case of execution proceedings which were pending. In our opinion, this point has no substance and has been rightly rejected.

(B) The Hon'ble Calcutta High Court, in a judgment reported in Rajendra Prasad Agarwalla and Others Vs. Allahabad Bank and Others, has observed as follows -

14. The above decisions unequivocally lay down the proposition that amendments to execution applications can be allowed in the interest of justice, even if and also at a stage when Order 21 Rule 17 cannot be invoked, by invoking the provisions of Sections 151 and 153 of the Code. The question, however, still remains whether an amendment which seeks to change the nature and character of the execution application, can be allowed. As stated earlier, in the instant case the execution application initially filed was for realisation of the decretal dues and by the amendment and decree-holder prayed for recovery of

possession of the suit lands. There is no manner of doubt that the amendment completely changed the nature and character of the execution application; and it was not one of those amendments which was of a technical nature or by which the decree-holder sought assistance of the Court for its execution in a different mode other than in which it was earlier prayed for as in the decisions cited above. (Para 18)

15. From the aforesaid decisions it is apparent that the principle is now well settled. An amendment of an execution application is not restricted to Order 21, Rule 17 only. Order 21, Rule 17, Sub-rule (1) contemplates the situation when the application is first filed. The purpose of the same sub-rule is to allow an opportunity to be given at the very onset of making such application, so that formal defects of the nature specified in Rules 11 to 14 of Order 21 may be rectified. We need not go into any question of so-called the distinction between Sub-rule (1) and Sub-rule (4) of Rule 17 as pointed out by the learned single judge as it is not necessary to do so in the present case. In our opinion this court has ample jurisdiction to allow an amendment of such application though it is not covered by Rule 17. However, in allowing such amendment the Court has to consider whether it has the effect of substantially altering the character of the execution proceedings.

(C) In *Ravindran and Another Vs. Dandayudhan and Others*, , the Hon''ble Kerala High Court has held as follows -

7. Those are only enabling provisions and they are not intended to affect the rights of parties or the powers of the court to make such orders as may be necessary for the ends of justice and Section 151 specifically saves such powers which are already there. The provision in the Code cannot be taken to be exhaustive to meet all contingencies. In order to meet such unprovided contingencies all civil courts unlike in the case of the criminal courts, are having inherent powers to meet the ends of justice and prevent abuse of the process of the court. Section 151 only saves and reminds the courts of such powers. When an unprovided contingency arises and the court is satisfied that something has to be done to meet the ends of justice or prevent abuse of the process of courts the only consideration is whether there is any prohibition in doing so. In such a contingency what is not prohibited could be taken as permitted. Otherwise the very purpose of the existence of courts will be defeated and Section 151 will become meaningless. It is the duty of the court to ascertain any defect in the, EP. as provided in Order 21, Rule 17 and allow it to be remedied. Courts are existing for dispensation of justice and not for its denial on technical grounds. Legislations are also for the same purpose and in interpreting them and applying them to the facts of cases courts must have a practical and progressive approach bearing in mind the object and purpose intended to be achieved by them. No such defect was found out by the court on ascertainment as provided in Order 21, Rule 17 or Rule 280 of the Civil Rules of Practice and no opportunity was given to rectify the same. If such an opportunity was given the defect would

have been rectified earlier and if it was not rectified even then the E.P. could have been dismissed. Such a failure on the part of the court should not be capable of meting out penal consequences to the litigants. Due to the failure of the court the defective B.P. continued to be on the file without giving an opportunity for curing the defects. When the decree-holders noticed the defect they applied for amendment and the court thought it fit to allow the same in the interest of justice without foreclosing any of the contentions available to the revision petitioners in the E.P. There is absolutely no jurisdictional error, illegality or material irregularity involved in the order. In effect the court was only rectifying its own error or omission to comply with the provisions of Order 21, Rule 17 or Rule 280 of the Civil Rules of Practice. (D) In a judgment reported in *Chloride India Ltd. Vs. District of Judge, Puri and Others*, , it is held as follows -

16. By amendment opposite party No. 3. inserted only that description which was given in the H.R.C. petition and in respect of which, House Rent Controller passed the order of eviction. It appears that original execution petition did not contain any detailed description of the premises in question. The decree-holder-opposite party No. 3 did not change or alter or substitute any description, but merely supplied the description to rectify an omission. If the decree holder had sought to introduce a description different from the description given in the H.R.C. petition the judgment-debtor-petitioner might have a legitimate grievance. In the facts and circumstances of the present case the description introduced by amendment is in conformity with the description given in H.R.C. petition. Thus, the Executing Court did not commit any error in allowing the amendment and the District Judge rightly rejected the petitioner's application under Section 115, C.P.C. (E) In *Kassim Beevi Vs. Meeranchi Mytheen Beevi and Others*, , it is held as follows -

"When there was misdescription in the agreement of sale about the boundaries of the properly agreed to be sold and this discrepancy was noticed by the court passing the decree for specific performance, the execution of the decree could not be opposed on the technical plea of misdescription of the property, when there was no dispute as to identity of the property agreed to be sold. In the case of this nature, the executing court is bound to carry out and implement its decree in accordance with its tenor which in turn would imply that the property should be correctly described with the proper boundaries. It is not as if by doing so the court is traversing beyond the decree or causing any prejudice to any of the parties or conveying property not agreed to be conveyed." (F) In a judgment reported in *Madhukar Timbak Gore Vs. Vasant Ramkrishna Kolhatkar*, , Bombay High Court has held as follows -

18. This then brings me to the second ground on which the executing Court has refused to execute. the decree, viz., that the identity of the property of which the applicant was seeking possession was not established. It is true that the decree as drawn does not give the description of the room of which the non-applicant was supposed to put the applicant in possession under Clause 4 of the decree,

after repairs. Now in this respect, one would have to look to all the terms of the decree and the background in which the compromise was arrived at. It does not appear that there was any dispute with regard to the identity of the room which the applicant was occupation prior to his handing it over to the non-applicant for repairs or renovation. Clause 2 of the decree specifically states that the applicant would shift to a room on the back side to enable the non-applicant to carry out the necessary repairs such a laying slab on the room. "in the said rooms occupied by the plaintiff ". Clause 3 further provides that the non-application was to carry out the repairs within four months from the date the applicant would hand over possession to him and further clause 4 says that the non-applicant agreed to continue the appellant as his tenant in the new renovated room as before and to put him back in possession of the said room after the intended repairs had been carried out. From all these clause in the decree it is abundantly clear that what was intended was that the applicant was to hand over possession of his previous tenement to the non-applicant who, after putting up a slab on the roof and carrying out other necessary repairs, would hand it over back to the applicant. In these circumstance it is difficult to see how it could be said that the decree was not clear as to the room of which the applicant was to be put in possession in pursuance was of Clause 4 thereof. It should have been clear to the Court that what the decree required the applicant to put in possession was the old room as renovated by the non-applicant while renovating the room has so much changed the dimension and description that it does not agree with the description given in the suit. But the decree cannot be frustrated on this ground when the non applicant had solemnly entered into a compromise and asked the Court to make it a part of the decree. If the Court found that proper description of the property which was to be delivered to the applicant was not available from the record, it was its duty to ascertain it by making a proper inquiry. Obviously the executing Court has not made any effect in this direction.

19. When in execution a question arises as to the identity of the property of which possession has to be delivered to the decree-holder obviously such a question would relate to the execution of the decree and it would be for the executing Court to decide it as required by subsection (1) of Section 47 of the Code, since it would not be possible for the decree-holder to get it determined by a separate suit, The proposition is so obvious so as not to need any authority. But no facts similar to High ones in the present case the Alahabad High Court in Rahim Buxv. Mohammad Shafi has held that in such cases it is for the execution Court to decide the question after taking such evidence as may be necessary as to what is the property of which possession has to be delivered. In this case also the executing Court would do well to hold a proper inquiry and determine the question with regard to the identity of the room which has to be delivered, to the applicant.

(G) The Hon''ble Supreme Court in Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another, has held thus -

19. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began and ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution court does not appear to have considered those documents. If one reads the order of that court, it is clear that it failed to construe the decree though it purported to have construed the decree. In its order there is no reference to the documents to which we have made reference earlier. It appears to have been unduly influenced by the words of the decree under execution. The appellate court fell into the same error. When the matter was taken up in revision to the High Court, the High Court declined to go into the question of the construction of the decree on the ground that a wrong construction of a decree merely raises a question of law and it involves no question of jurisdiction to bring the case within Section 115, Civil Procedure Code. As seen earlier in this case the executing court and the appellate court had not construed the decree at all. They had not even referred to the relevant documents. They had merely gone by the words used in the decree under execution. It is clear that they had failed to construe the decree. Their omission to construe the decree is really an omission to exercise the jurisdiction vested in them. (H) In a judgment reported in 1982 (2) SCC 456 [Shafiqur Rehman Khan v. Smt. Mohammad Jahan Begum], the Hon"ble Apex Court has held as follows -

"The Executing Court will determine, with the help of Ex.3 and such other evidence which the parties may adduce, whether the decree-holders have established satisfactorily the identity of the property in regard to which they have obtained the decree under execution. If the identity of the property is established, but not otherwise, the decree will be executed and the decree holders will be put in possession of the property in accordance with law. It will, of course, be open to the judgment-debtors to show that the decree is incapable of execution for the reason that the property cannot be properly identified." (I) In Ravinder Kaur Vs. Ashok Kumar and Another, , it is observed as follows -

Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them. This type of errors on the part of the judicial forums only

encourage frivolous and cantankerous litigations causing laws delay and bringing bad name to the judicial system. 9. Keeping in mind the principles laid down in the decisions referred supra, I am of the considered opinion that the judgments relied upon by the learned counsel for the petitioners have no bearing to the facts of this case.

10. It is not in dispute that the suit filed by the respondents namely Shri Chinni Subbaiah Chetty Charities and Ors. for recovery of possession was decreed by the trial court and the same was confirmed by this Court. In the execution proceedings also, the description of the property is not disputed by the judgment debtor. Admittedly, when the suit was filed in the year 1983, the suit property was lying with the jurisdiction of Ambattur Municipality and after the extension of the Chennai Corporation area, the Ambattur Municipality was annexed with Chennai Corporation. Subsequently, the door number of the suit property was changed from Door No. 4 to Door Nos. 5, 5A and 5B and due to passage of time, there was some development to the adjacent properties also. In the above facts, the decree holder filed the application for amendment. In my view, the amendment is not altering the character of the execution proceedings and the executing court has ordered amendment to do substantial justice to the parties.

11. I am in agreement with the decisions reported in Rajendra Prasad Agarwalla and Others Vs. Allahabad Bank and Others, , Ravindran and Another Vs. Dandayudhan and Others, and Chloride India Ltd. Vs. District of Judge, Puri and Others, , in holding that the executing court has got jurisdiction to order amendment of execution petition invoking Section 151 of CPC to meet the ends of justice. In view of my finding, I do not agree with the contention of the learned counsel for the petitioners. I do not find any merit in this revision petition.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. Considering the fact that the execution petition is pending since 2002, the executing court is directed not to entertain any application of judgment debtor and to dispose of the execution petition within a period of two months from the date of receipt of a copy of this order.