

(2012) 06 MAD CK 0104
In the Madras High Court
Case No : CRP NPD. No. 1693 of 2012

S.N. Kulasekaran

APPELLANT

Vs

S. Packiaraj and S. Rajeswari

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 98
Transfer of Property Act, 1882 — Section 52

Citation : (2012) 06 MAD CK 0104

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Muthudurai, for the Appellant;

Judgement

Honourable Mr. Justice G. Rajasuria

1. This civil revision petition is filed seeking direction to the learned IX Assistant Judge, City Civil Court, Chennai to dispose of the unnumbered E.A. No. of 2012 (S.R. No. 16889 of 2012) in E.P. No. 457 of 2007 on his file, by issuing a fresh warrant for delivery of possession to the Bailiff pursuant to the order of delivery passed in E.A. No. 593 of 2012 in E.P. No. 457 of 2007 on 21.2.2012 pending on his file. The facts as stood uncurtained in this matter could be encapsulated thus:

The unnumbered E.A. No. of 2012 (SR. No. 16889 of 2012) in E.P. was returned by the Executing Court with the following endorsement:

1. Perusal of the E.C., and certified copies of sale deeds submitted by a petitioner/DH in the E.P. shows that Mr. R. James has not purchased any portion of property from Respondent 2/Obstructor Rajeswari or from any one who claim right through her. He has stated to the petitioner that he has documents to the portion which is occupied by him.

2. In the petition in E.A. No. 1111/12 which was dismissed as not pressed on 09.04.2012 with liberty to file fresh application under correct provisions of law, seven respondents/Third parties namely Mohan Senthil Kumar, Nagarajan,

Vasanthi Chandrasekaran, R.J. Paul, Gnanaselvi Austin, Yovel Selvaraj and James are shown as in the cause title of the affidavit and petition. But in this petition, these seven names are not show in the cause title, but mentioned only in the prayer.

3. In the above E.A. No. 1111/12, a detailed reason was shown for ordering notice, since the correctness of the property is also to be ascertained and after ordering of notice only the same was not pressed on 09.04.2012. Hence the above mentioned seven persons are to be shown as parties to this petition, so that the corrections of the property could be ascertained. How orders can be passed against the persons mentioned in the prayer, without they being made as parties is to be explained.

4. Respondent/Judgment Debtor and Respondent 2/Obstructor names were not shown as parties in E.A. No. 1111/12 which was not pressed on 09.04.2012 and against Respondent 2/Obstruction herein, earlier application in E.A. No. 84/99 before DMC, Poonamallee and later on transferred to this Court and numbered as E.A. No. 593/12, had been finally adjudicated by the order dated 21.10.2011 in CMA No. 56/2007, by the Honourable VI Additional Judge, City Civil Court, against Respondent 2 herein. Hence the petitioner is to explain how Respondent 2/Obstructor herein is a necessary party to this application.

5. Admittedly, the matter against the Respondent 1/Judgment Debtor a compromise had been arrived between the petitioner and Respondent -1/JD, How it can be shown as a Respondent in the provisional application is to be explained.

Time: One day.

3. Being aggrieved by and dissatisfied with the said return, this revision has been focussed.

4. Placing reliance on the grounds of revision, the learned counsel for the petitioner, would put forth and set forth his arguments, which could pithily and precisely be set out thus:

(a) The trial Court was not justified in simply returning the said petition after the Hon"ble Apex Court had adjudged the matter finally.

(b) The Executing Court originally ordered delivery of possession as early as on 21.02.2012. When the bailiff went to the spot, six persons presented obstruction petitions by contending as though they purchased the property; however, no documents or any details are found referred to therein. Accordingly, the bailiff returned the warrant for further direction from the Court, whereupon E.A. No. 1111 of 2012 was filed citing Mohan Senthilkumar, Nagarajan, Vasanthi Chandrasekaran, R.J. Paul, Gnanaselvi Austin, Yovel Selvaraj and James as respondents and notice was ordered by the Court. Subsequently, the decree holder felt that such taking of notice to the alleged obstructors was not necessary because they were not having any independent right, but they were only under the instigation of Rajeswari claiming title and such persons are not to

be heard under Order 21 Rule 98 of CPC. Whereupon, the said application was endorsed as not pressed and it was dismissed. Then the present unnumbered E.A. was filed with the following prayer:

To issue fresh delivery warrant, directing the removal of superstructure in the suit property situated at Villivakkam village, Purasawalkam Perambur Taluk, situated in thangam Colony, Anna nagar, Chennai 40 comprised in Old Survey No. 131/2 part and sub-division number as 131/2 A1 A 2 now T.S. No. 79 block No. 43, measuring East to west on both sides 40 feet and North to South on both sides 75 feet admeasuring 3000 sq.feet, bounded on North by plot No. 33 belonging to Sunil, South by 30 feet Vivekananda Street, West by property of Jeya and East by the property belonging to S. Packiaraj at old No. 61 A1, A2, A3, A4, A5 and A6 at Thangam Colony, Annanagar, Chennai 40 now its new No. 21/1, 21/2, 21/3, 21/4, 21/5 and 21/6 at Vivekananda Street, Thangam Colony, Annanagar, Chennai 40 and deliver vacant possession of the suit property to the decree holder more fully described in the schedule to E.P. No. 457/2012 by removing all the obstructors/third parties who claim under S. Rajeswari viz. 1. Mohan Senthil Kumar, 2. Nagarajan, 3. Vasantha Chandrasekaran, 4. R.J. Paul, 5. Gnanaselvi Austin, 6. Yovel Selvaraj and 7. R. James or any other persons who may be in actual occupation of the suit property on the date of the execution warrant for delivery of possession by the bailiff with necessary police aid.

(c) The decree holder also produced before the Executing Court along with the said application the E.C. and necessary certified copies of the documents under whom those alleged obstructors are claiming. Despite that, the Executing Court simply returned it with untenable queries.

Accordingly, the learned counsel for the petitioner would pray for directing the lower Court to do the needful and proceed with the E.P. and order delivery.

4. On hearing the revision petitioner, I am of the considered view that no notice to respondents 1 and 2 herein is required and already as against them the matter attained finality and further more, this return of the application is only between the Court and the decree holder and since the decree holder is aggrieved by it and preferred the revision, no notice to the respondents herein or to the alleged obstructors referred to in the prayer of the unnumbered petition is required.

5. The point for consideration is as to what step the Executing Court should take in the facts and circumstances of this case?

6. At the outset, I would like to shed light on the duty of the Executing Court in the event of the bailiff returning the warrant of delivery on the ground that there is obstruction. Hence it is just and necessary to re-produce hereunder the relevant provision of law, so to say, Order 21 Rule 98 of CPC:

98. Orders after adjudication.

(1) Upon the determination of the questions referred to in rule 101, the Court

shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

7. The learned counsel for the petitioner would cite the decision of the Hon'ble Apex Court reported in B. Gangadhar Vs. B.G. Rajalingam,

8. A bare perusal of the said judgment along with the aforecited provision of law, would unequivocally and unambiguously highlight and spotlight the fact that at the time of effecting delivery if any one obstructs delivery by claiming that they derived title under the judgment debtor, then such a person is not entitled to be treated as an obstructor and such person is not entitled to get his claim processed like a suit within the ambit of Order 21 Rule 98 read with Rule 101 of CPC.

9. Peculiarly in this case, the six obstructors who gave obstruction petitions did not choose to specify the document under which they assert their title. In order of take the wind out of the sail of the obstructors and avoid those alleged obstructors to protract the execution proceedings, the decree holder as pointed out by the learned counsel for the decree holder, filed certified copies of the documents in favour of those obstructors and those documents have been placed before the Executing Court for the satisfaction of the Executing Court not to summon such obstructors and conduct elaborate enquiry on par with the suit and thereby delay the ordering of delivery.

10. In this factual matrix, it is the duty of the Executing Court before insisting upon the decree holder to implead eonomine such obstructors, hear the decree holder and peruse the documents under which those alleged obstructors are claiming title and that the Executing Court on getting itself satisfied that those alleged obstructors are asserting their right in the suit property only under the judgment debtor, would be justified in not insisting the decree holder to implead those obstructors.

11. The learned counsel for the decree holder also would draw the attention of this Court to the fact that earlier this Court vide the common order dated

09.02.2010 in CRP NPD Nos. 1626 ad 3001 of 2009 in respect of the same matter held as follows:

31. On a careful consideration of respective contentions, this Court is of the considered view that the petitioner has purchased the suit property during the pendency of the suit proceedings and the petitioner's transferor viz., second Respondent (Rajeswari) has transferred the same and therefore in the teeth of Section 52 of Transfer of Property Act 1882, the transfer of property in favour of the petitioner is clearly hit by principle of Lis Pendens and as such the petitioner is not a proper or a necessary party to the Civil Miscellaneous Appeal and in that view of the matter, this revision fails.

12. The learned counsel for the decree holder would also draw the attention of this Court to one other order of this Court dated 10.08.1999 in CRP No. 1360 of 1999 in respect of the same matter, which reads as under:

15. I direct the executing Court to see that the decree holder obtains physical possession of the property within a period of one month from today and report compliance of the same to this Court. The lower Court is also directed to provide adequate and necessary police protection to see that the property is delivered to the decree-holder and no obstruction is caused in executing the decree. The question of identification of property in execution also does not arise since that was the matter in the suit itself, and decree has been passed allowing recovery of the property in the possession of defendants. Defendants cannot dispute the identity of the property which is in his possession. The executing Court is directed to see that the warrant of delivery is also not returned on frivolous grounds, making the decree unexecutable. The executing Court is directed to comply with the above directions in all its seriousness. For reporting compliance, call this Revision Petition on 15.09.1999.

13. The learned counsel for the decree holder would draw the attention of this Court to the Advocate Commissioner's report and sketch filed in E.A. No. 7138 of 2007 and point out that the dispute relating to identification was also settled long ago.

14. The perusal of the returns made by the Executing Court in the unnumbered E.A. No. of 2012 (S.R. No. 16889 of 2012), would display and demonstrate that the trial Court developed some doubt about the identity and also the factum as to why the alleged obstructors having been impleaded in E.A. No. 1111 of 2012 had not been impleaded in this unnumbered E.A. would not matter, provided the E.P. Court is satisfied with the documents placed before him. The learned counsel for the decree holder inviting the attention of this Court to the said common order passed, would point out that one among the alleged attestors namely R.J. Paul, who is the brother of James, the petitioner in both the CRPs, met his Waterloo and he lost his contention also. As such I am of the considered view that the Executing Court is bound to peruse all those documents and proceed further with the matter as per law and it is for the learned counsel for the decree

holder to undertake to explain once again before the Executing Court the reasons for non impleadment of the parties and his insistence for not taking notice to such persons; whereupon the Court has to apply its mind and do the needful as per law. The Executing Court shall do well to see that the orders are passed within a period of fifteen days from the date of receipt of a copy of this order. Accordingly, this civil revision petition is disposed of. No costs.