
(2015) 07 MAD CK 0114

In the Madras High Court

Case No : C.R.P. (NPD) No. 3464 of 2013 and M.P. No. 1 of 2013

The Executive Engineer and Administrative Officer, Tamil
Nadu Housing Board

APPELLANT

Vs

Rajalakshmi and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 5, Order 21 Rule 34, 115
Constitution of India, 1950 — Article 227

Citation : (2015) 07 MAD CK 0114

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Advocate : S. Gomathinayagam, Addl. Advocate General assisted by R. Jayaseelan, for the Appellant; T.V. Ramanujam, SC for C. Jagadish, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J—Challenging the fair and final order, passed in E.P. No. 370 of 2011 in O.S. No. 6355 of 2004, on the file of X Assistant City Civil Court, Chennai, the second Judgement Debtor viz., The Executive Engineer and Administrative Officer, Tamil Nadu Housing Board has filed the above Civil Revision Petition.

2. The first respondent/plaintiff filed a suit in O.S. No. 6355 of 2004 for the following reliefs:

(a) direct the 1st defendant to obtain Sale Deed in respect of the Schedule mentioned property bearing Old No. 53/D, New No. 1/4, First Avenue Extension, Indira Nagar, Adyar, Chennai-600 020 from the 2nd defendant and thereafter executing the Sale Deed in respect of the schedule mentioned property to in favour of the Plaintiff within one month

or

directing the 2nd defendant to execute the sale deed in respect of the schedule mentioned property to in favour of the plaintiff the 1st defendant fails to obtain this Sale Deed in his favour in respect of the schedule mentioned property at the plaintiff's cost, hence the 1st defendant has received the entire sale consideration in respect of the Suit Schedule property and cost of the suit.

3. Since the defendants remained absent, the trial court passed an ex-parte decree on 25.4.2005. Pursuant to the decree, passed on 25.4.2005 in O.S. No. 6355 of 2004, the first respondent/plaintiff filed an Execution Petition in E.P. No. 4370 of 2011, on the file of X Assistant City Civil Court, Chennai.

4. The petitioner filed a counter in the Execution Petition, stating that the second respondent/first defendant was allotted the suit property by the Tamil Nadu Housing Board and that, he was in an uninterrupted enjoyment. Further, in the counter, it is stated that the Tamil Nadu Housing Board is ready to execute the Sale Deed, if the allottee approaches with relevant documents.

5. The Executing Court, after taking into consideration the case of both the parties, allowed the Execution Petition and directed the second Judgement Debtor to execute the sale deed in favour of the Decree Holder on or before 26.8.2013 and also observed that on failure to execute the sale deed, the Decree Holder was directed to file a Draft Sale Deed by 27.8.2013. Challenging this Order, the Housing Board has filed the above Civil Revision Petition.

6. Heard Mr.S. Gomathinayagam, learned Additional Advocate General, appearing for the petitioner and Mr.T.V. Ramanujam, learned Senior Counsel for the first respondent.

7. Mr.S. Gomathinayagam, learned Additional Advocate General submitted that the judgment passed by the trial court itself is not in consonance with the Order 20 Rule 5 of Civil Procedure Code and therefore, the judgment and decree passed in O.S. No. 6355 of 2004 dated 25.4.2005 should be set aside.

8. The learned Additional Advocate General submitted that under Article 227 of the Constitution of India, this Court has jurisdiction to set aside the erroneous judgment and decree suo motu. In support of his contention, the learned Additional Advocate General relied on the following judgments:

(i) Surya Dev Rai Vs. Ram Chander Rai and Others, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 , wherein, the Apex Court has held as follows:

38.(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does not have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may

step into exercise its supervisory jurisdiction.

(ii) Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd., (2011) 3 CTC 168 : (2011) 3 LW 80 : (2011) 7 MLJ 652 , wherein, the Division Bench of this Court has held as follows:

16. Code of Civil Procedure does not define either an ex-parte judgment or an ex-parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the Defendant fails to defend the Suit by his absence, that judgment is known to be an ex-parte judgment and the decree drawn on the basis of that judgment is known as an ex-parte decree. Hence, even for an ex-parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.

9. Further, the learned Additional Advocate General submitted that since the judgment and decree passed in the suit is not in conformity with the provision of Order 20 Rule 5 of Civil Procedure Code, the decree becomes an inexecutable decree and therefore, the order passed by the Executing Court is liable to be set aside.

10. Countering the submissions made by the learned Additional Advocate General, Mr.T.V. Ramanujam, learned Senior Counsel appearing for the first respondent submitted that the submissions, made by the learned Additional Advocate General, has been made for the first time in the Civil Revision Petition and that the petitioner has not raised any ground in the Revision to that effect. The learned Senior Counsel further submitted that when specific provisions were available to the Housing Board to set aside the ex-parte decree or to file an appeal as against the judgment and decree, passed by the trial court, without taking any steps to question the correctness of the judgment and decree, passed in the suit, now in the Civil Revision Petition, challenging the order passed in the Execution Petition, the learned Additional Advocate General is canvassing the correctness of the judgment and decree, passed in the suit, which cannot be permitted.

11. That apart, the learned Senior Counsel submitted that by letter dated 22.8.2013, the petitioner Housing Board requested the first respondent to produce some documents for getting the sale deed executed in her favour. In these circumstances, the learned Senior Counsel prayed for dismissal of the Civil Revision Petition.

12. On a careful consideration of the materials available on record and also the submissions made by the learned Senior Counsel on either side, it is clear that the petitioner Housing Board has not challenged the correctness of the judgment and decree, passed in O.S. No. 6355 of 2004 dated 25.4.2005. Without challenging the correctness of the judgment and decree, the petitioner cannot argue the correctness of the judgment and decree in the Civil Revision Petition,

filed as against the order passed in the Execution Petition, that too after a lapse of ten years.

13. It is also pertinent to note that the present Civil Revision Petition is filed under Section 115 of the Civil Procedure Code. The contention of the learned Additional Advocate General that this Court has jurisdiction under Article 227 of the Constitution of India to set aside the judgment and decree, passed in the suit, cannot stand for the reason that the petitioner is raising this contention after a lapse of ten years from the date of the decree passed in the suit. The Execution Petition was filed in the year 2011 and the petitioner also entered appearance, filed their counter and contested the Execution Petition. Even during the pendency of the Execution Petition, the petitioner has not taken any steps to question the correctness of the judgment and decree, passed in the suit.

14. As rightly pointed out by the learned Senior Counsel, appearing for the first respondent, though the learned Additional Advocate General contended that the judgment and decree passed in the suit are not in conformity with the provision of Order 20 Rule 5 of Civil Procedure Code, no ground has been raised in the Memo of Grounds in the Civil Revision Petition, with regard to the correctness of the judgment and decree, passed in the suit.

15. In these circumstances, the contentions raised by the learned Additional Advocate General that, the judgment and decree can be set aside under Article 227 of the Constitution of India, is rejected.

16. So far as the impugned order, passed in the Execution Petition in E.P. No. 4370 of 2011 is concerned, it is settled position that the Executing Court is bound by the decree passed by the trial court, either it is a contested decree or an ex-parte decree. In the order, the Executing Court had allowed the application and directed the petitioner/Housing Board to execute the sale deed in favour of the plaintiff/1st respondent and if the petitioner/Housing Board fails to execute the sale deed, the Decree Holder was directed to file a Draft Sale Deed. The Order passed by the Executing Court is in conformity with the provisions of Order 21 Rule 34 of Civil Procedure Code and it cannot be termed as an erroneous order.

17. When the Court has directed the Housing Board to execute the sale deed and on failure to execute the sale deed, directed the decree holder to file a draft sale deed, the order passed by the Executing Court is just and proper.

18. The petitioner should have taken steps either to set aside the ex-parte decree dated 25.4.2005 or should have filed an appeal as against the judgment and decree, passed in the suit. However, the petitioner failed to exercise these remedies.

19. In these circumstances, I do not find any error or irregularity in the order passed by the Executing Court in E.P. No. 4370 of 2011 in O.S. No. 6355 of 2004 on the file of X Assistant City Civil Court, Chennai and the Civil Revision Petition

is liable to be dismissed as devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected MP is closed.