

IN THE COURT OF THE MUNSIF, KARUNAGAPPALLY.

Present:- Smt.Dr.Amritha.T, Munsiff.

Friday, the 07th day of July, 2023/the 16th day of Ashadam, 1945.

E.A.28/2023 in E.P.70/2016

Between

Claim Petitioners:-

Madhuri, aged 45 years,
W/o.Suresh, Suresh Bhavan
(Nandu Bhavan),
Maruthoorkulangara south,
Alumkadavu.PO, Karunagappally

By Adv.Sri.Vinayakumar.K

And

Respondents:-

1. Rajesh @ Ratheesh, aged 41 years,
S/o.Sasidharan, Thayyil veedu,
Maruthoorkulangara south,
Alumkadavu.PO, Karunagappally village,
now residing at No.1/943, IInd Floor
Ashok Street, Bhavani nagar, Red Hills,
Chennai-600052
2. Sasidharan @ Rajan, aged 67 years,
S/o.Thankappan Thayil veedu,
Maruthoorkulangara south,
Alumkadavu.PO, Karunagappally village
now residing at Mandathu House,
Payikuzhi, Oachira, Karunagappally
3. Remanan, aged 53 years, S/o.Thankappan,
Nalukandathil, Adinadu south muri, Adinadu
village, Kattilkadavu.PO, Karunagappally
4. Ganga, aged 46 years, W/o.Remanan,
D/o.Thankappan, Nalukandathil,
Adinadu south muri, Adinadu village,
Kattilkadavu.PO, Karunagappally

5. Maruthoorkulangara North Coir Industrial Co-operative Society Limited No.474, Alunkadavu.PO, Karunagappally represented by its President
6. State of Kerala, represented by District Collector, Kollam
7. Tahsildar, Taluk office, Karunagappally
8. Village Officer, Karunagappally Village Office, Karunagappally

This claim petition filed by the claim petitioner under order XXI Rule 92 of CPC.

This petition coming on for hearing before me on 07.07.2023 and on the same day the court passed the following.

ORDER

This claim petition is filed by the member of Coir Co-operative Society Ltd.No.474. The society is registered under Kerala Co-operative Societies Act, 1964. The 1st and 2nd claim petitioners are the members of the said co-operative society. Currently the society has 719 members. The president of 5th respondent was entrusted to conduct the business for the well being of the society. The decree holder was the plaintiff in OS. 331/2012. The trial court decreed that the sale deed No.751/2001 of Karunagappally SRO executed by the 2nd respondent in favour of 3rd and 4th respondents as well as the sale deed no 229/08 executed in favour of the 5th respondent by the 3rd and 4th

respondent as void and it does not bind the plaintiff. Further the 5th respondent was directed to vacate the decree scheduled property and handover possession to the 1st respondent. Maruthoor North Coir Co-operative Society was the 4th defendant in that case. In the year 1987 the 2nd respondent executed a settlement deed No.2379/1987 in favour of 1st respondent who was a minor then. Till 1999 the 2nd respondent hold the possession of decreetal schedule property on behalf of the 1st respondent. After the 1st respondent became mature he got the possession of the same. In the year 2000, the 1st respondent went Tamilnadu for job and the 2nd respondent was residing in the decreetal property. On 20.11.2011, when the 1st respondent reached back, he found the society functioning in the property run by the 5th respondent. Then only he came to know that the property was sold to the 5th respondent. The 2nd respondent sold the property belonged to the 1st respondent. After the purchasing of the property on sale consideration the 5th a building was constructed in it. The office of the 5th respondent and the coir business are functioning in the property. In the suit filed by the 1st respondent, the 5th respondent was defended by the then President, who did not contest the same properly leading to adverse order against the society. On 22.02.2016, the 5th respondent preferred an appeal before the Hon'ble Sub Court numbered as AS. 33/2016 and the same was dismissed. That case

was also contested by the President of 5th respondent. By utilizing the money of share holders the decreetal schedule property was purchased by the 5th respondent. Thereafter by the aid of government buildings were constructed in the property and also improvements were made. The members of society also paid contribution for the improvements for construction. The building was constructed on a costs of Rs.25/- lakh and for improvements caused Rs.30/- lakhs. Neither in OS 331/2012 nor in AS. 33/2016, the question of improvements made by the 5th respondent was not argued. The President of the 5th respondent had not submitted the details of improvements before the Hon'ble Court. The improvements made in the decree schedule property are entitled to the share holders of 5th respondent alone. The execution petition cannot be proceeded with without considering the building and improvements made in the decree schedule property. The Government of Kerala is also has an interest in the improvements in the decreetal property. However 5th respondent as well as the respondent No.6 to 8 are not interested to protect the properties of the Co-operative Society. Hence this petition is filed for restraining the 1st respondent from removing the members of the building of the Society and from demolishing the improvements made in the property.

2. According to the decree holder, the 5th respondent is a President selected by the members of the society. He denied the contention that the 5th respondent derived the plaint schedule property by virtue of sale deed No.229/2008 by paying sale consideration. At the time of execution of settlement deed No.2379/1987 the decree holder/1st respondent was a minor. He had never transferred his right over the plaint schedule property to another. The claim petitioners herein are only acting for the 5th respondent to defeat the decree. The 5th respondent was duly represented in the civil suit. The contention that the case was not properly contested for 5th respondent and the question of improvements cannot be considered after eight years of decree. It is further stated that in the schedule of sale deed No.229/2008 it is clearly stated that the property consist of godown building. According to the 1st respondent, he is not responsible for any construction made in the decree schedule property. The claim petitioners have no right to construct building in the property of strangers. Therefore the contention of the claim petitioners that the building was constructed in the property with the aid of state government is superfluous and imaginary one. Since this a fixatious petition the same has to be dismissed.

3. On the basis of the above determination the only point is raised for consideration.

Whether the claim petition is maintainable?

4. No evidence has not been adduced.

5. Heard.

6. The Point:- The claim petitioners herein are none other than the members of Maruthoor North Coir Co-operative Society Ltd.No. 474 who was arrayed as 5th respondent in the claim petition. In the original suit the society was arrayed as a 4th defendant, represented by the President. In the suit as well as in this claim petition the Society is represented by the President. According to the claim petitioners, the property for 5th respondent was purchased by the then President on sale consideration by virtue of sale deed No. 229/2008. Originally the decree schedule property belonged to the 1st respondent/deed holder who was a minor then. He derived the property by virtue of settlement deed No. 2389/1987. It was executed by the 2nd respondent in favour of the 1st respondent. In the year 2000, the 1st respondent went to Tamil Nadu for job. Thereafter in the year 2001, the 2nd respondent executed a deed in favour of the 3rd and 4th respondents No. 751/2001 of Karunagappally, Sub Registrar Office. Again in the year 2008, the property was transferred to the 5th respondent by virtue of sale deed No.229/2008. On 20.11.2011, the 1st respondent reached back and found the 5th respondent functioning in the decree schedule property. Thus he filed a

suit No. OS 331/2012 and obtained a decree in his favour. The suit is decreed as follows:

In the result, suit is decreed declaring that the sale deed No 751/2001 and sale deed No.229/2008 of Karunagappally Sub Registrar Office are void abinito and are not binding on the plaintiff. The plaintiff is entitled to recover the plaint schedule property from the 4th defendant. The 4th defendant is directed to vacate from the plaint schedule property within three months from the date of the decree failing which plaintiff can get it executed through the due process of the court, the costs of which shall be levied from the defendants Nos. 2 to 4. Plaintiff is entitled to the costs of the suit from defendants 2 to 4.

7. Being aggrieved by the order of trial court the defendant approached the Hon'ble Sub Court by filing an appeal No.AS 33/2016 . The appeal was also dismissed against the defendants. No stay has been produced by the claim petitioners from the Honb'le Appellate court against the execution petition.

8. The main contention of the claim petitioners is that the President of 5th respondent did not contest the case properly and the improvements made in the decree schedule property were not brought to the notice of either trial court or order of the Appellate court. Without deciding the question of

improvements made in the decretal schedule property EP 70/2016 cannot be executed. This court is of view that, the claim petitioners who are the members of the 5th respondent, Society, are duly represented by the President in the suit as well as in AS-33/2016. The non-contesting of the case properly by the President is not a valid argument to put the execution petition on hold. The question of improvements made in the decree scheduled property could have been very well raised in the trial court as well as in the Appellate court. The Hon'ble Supreme Court of India in *B. Gangadhar v B.G. Rajalingiam* AIR 1996 SC 780 held that *"The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes*

inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings” .

9. I am satisfied that the intention of the claim petitioner is to further delay the execution petition to deny delivery of justice to the 1st respondent/decreed holder. The contentions which could have been raised before the trial court can not be raised before the execution court by the party.

Hence E.A dismissed without costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 07th day of July,2023)

Sd/-
Dr.Amrita.T,
Munsiff.

Appendix :- Nil

Id/-
Munsiff

//True Copy//

Dr.Amrita.T
Munsiff

Typed by : Jyothilekshmy.R
Compared by :