

15.04.2021

The execution petition is filed by the petitioner/decree-holder under Order XX1, Rule 35, 36 and Section 151 of Code of Civil Procedure directing the 2nd respondent who is representing the illegal occupants under the guise of invalid sale deed No.4255/2005 to vacate and handover the petition schedule property to the petitioner/decree-holder.

The petitioner herein is the decree-holder in the execution petition. The petitioner filed the suit for recovery of vacant possession of the scheduled property from the respondents/judgment debtors after vacating the respondent/judgment debtors from the schedule property or in the alternative to compensate Rs.1,50,00,000/- as costs of the land. The suit was decreed on 27.06.2018. The court has granted a decree for declaration of title and

possession in favour of the petitioner.

It is also decreed that the 2nd defendant representing all other illegal occupants under him have to hand over vacant possession to the petitioner within a period of 3 months from the date of decree and the three months period finished on 26.09.2018. The respondents have not preferred any appeal before the Hon'ble High Court. Hence the order of this court is final. Hence, it is just necessary that the Hon'ble court may be pleased to pass an appropriate order to evict/vacate the respondents from schedule property and hand over the vacant possession to the petitioner/decree-holder. Hence, the petition may be allowed.

Notice in the said petition was served to the respondents 1 to 3 and Advocate Mr. A. Gnanasekhar filed vakkalath for R2 and Government Pleader filed memo of appearance for R3. Thereafter, R1 was set exparte on

28.02.2020 and the 3rd respondent alone filed the counter.

Heard the arguments advanced by both sides. No evidence was adduced on both sides.

The learned counsel for the petitioner/decree-holder argued that the petitioner/decree-holder filed a suit for declaration of title and possession and the same was decreed by the trial court on 27.06.2018 granting three months time to hand over the vacant possession of the schedule property. The said three months was completed on 26.09.2018. The respondents have not preferred any appeal against the decree of the trial court. Hence the decree becomes final. Though a three months was granted to the respondents by the trial court, the respondents have not handed over the vacant possession to the petitioner/decree-holder. Hence, the petition and the same may be allowed.

Per contra, the learned

Government Pleader argued that there is no decree against the 3rd respondent.

Hence, the execution petition is not maintainable against the 3rd respondent/3rd defendant. The 3rd respondent was unnecessarily impleaded in the execution petition. Hence, the execution petition may be dismissed against the 3rd respondent.

This court carefully considered the arguments advanced by both sides.

A perusal of the decree granted by the trial court dated 27.06.2018 shows that a decree for recovery of possession is granted against the defendants 1 and 2 and those who are claiming under the 2nd defendant on or before 26.09.2018. Therefore, there is no decree passed against the 3rd respondent who is the Sub Registrar, Parasala, Kerala State. Under these circumstances, the petitioner is entitled to execute the decree passed in his favour against the respondents 1 and 2.

Hence this point is answered accordingly.

In the result, this petition is allowed. Delivery by 07.06.2021. Delivery batta within a week. Call on 07.06.2021.

P.D.J.