

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE AT GUDALUR, THE NILGIRIS

PRESENT: S.R.Babu, B.A., B.L.,
Principal District Munsif -cum-
Judicial Magistrate, Gudalur. The Nilgiris.
Tuesday the 21st day of September 2021.

E.P.No.9/2017

O.S No. 129/2013

Sudhakaran

.... Plaintiff

-Vs-

Prakash Chandran

.... Defendant

This Petition coming on final hearing on 14.09.2021, in the presence of Mr. V.S.Issac, Advocate for the plaintiff. Mr. Mathew Thomas, Advocate for the defendant and hearing arguments on both side and this day the Court delivered the following:

ORDER

The petition is filed by the petitioner to execute the sale deed of the petition property in favour of the petitioner.

1. The petition averments that the petitioner is the decree holder in the above EP and the above suit was decree on 16.06.2011 and directing the respondent to execute the sale deed in favour of the petitioner failing which direct the office to execute the sale deed of the schedule mentioned property in favour of the petitioner with cost to the petitioner. The respondent failed to execute the sale deed in favour of

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the petitioner and he is purposely evading to execute the sale deed in spite of the court's order. Hence this petition.

2. The counter averments which are essential for disposal of the petition of that;

2.1. The petition is false, frivolous and vexatious and the one preferred with oblique motive and is not sustainable either in law or on facts of the case.

2.2. The respondent/Judgment debtor denies the whole execution petition as it is a mala fide one with intention to cheat the poor coolie including the respondent/Judgment debtor.

2.3. The petitioner/Decree Holder herein have filed the above said E.P by suppressing the agreed condition as per the sale agreement, dated 08.06.1994 in between the petitioner and respondent. There are two sale agreements in between them. In the first sale agreement the petitioner agreed to pay Rs.4,100/- for per cent of 15 cents. So totally he has to pay Rs.61,500/-.

2.4. The subject matter of the agreement is pathway for 12 feet width. This pathway is using several families that are the respondent, petitioner, Mani, W/o.Sasi, Mr.Ambadi and Mr.Purusothaman Kurup. The agricultural land of petitioner and respondent and all others above mentioned are in the left and right side of the pathway comprised in R.S.No.688/4, R.S.No.255/77 in Erumad village. So all these people are required this pathway and they are using the same by time immemorial by the width of 3 feet footpath. The three feet foot path is going in the patta land of respondent. So the petitioner and respondent entered in to a sale agreement for sale of 15 cents in consideration of Rs. 61,500/-, but the petitioner suggested to the respondent that, they can make a 12 feet width mud road and the same can be used by both the petitioner and respondent in equal rights and the sale price consideration can be reduced and settled as for Rs. 34,000/- In that 34,000/- the petitioner paid Rs. 30,000/- to the respondent. The balance of Rs.4,000/- also not given to the respondent by the petitioner and the same is pending. These are all mentioned in 2nd agreement.

2.5. The existing path way is using by residential families like Mani, W/o.Sasi, bearing D.No.13/104B1 and respondent's brother namely Ambadi bearing D.No.13/106A2. So the use of patyway by those persons by time immemorial cannot be curtailed by the sale agreement and the execution of sale deed through this Hon'ble court. Moreover the equal right of petitioner and respondent over the pathway and to the extended width of 12 feet also not be curtailed in what so ever manner which was already decided and agreed in between the respondent and petitioner. Even these facts are mentioned in the sale agreement in between the respondent and petitioner the same is not mentioned in the draft sale deed filed by the petitioner before this Hon'ble Court. So the petitioner is approached before this Hon'ble Court with suppression of already accepted condition while they are entering in the sale agreement in between them.

2.6. The petitioner is approached before this Hon'ble court with unclean hands by suppression of real facts. If this EP is allowed as per the suppressed sale deed filed by the petitioner the respondent and his family and all other using the pathway will effect adversely and the same will create fracas and other consequences which are unforeseen and the loss cannot be calculated by virtue of money value. The petitioner is reckless and lawless and he is having the money power and muscle power by political source. Hence this Hon'ble Court may be pleased to dismiss this execution petition with exemplary cost and thus render justice.

3. Whether the petition could be allowed?

4. It is admitted fact that the decree was passed in O.S.No.42/1998 on 16.06.2011 in favour of the petitioner. There is no order of stay nor any appeal shown to have been pending. The respondent have raised various factual contentions in the petitioner, but the same could not be gone through at this stage by the forum conducting the execution proceedings. Morefully the E.P.Court cannot traverse beyond the decree.

5. When coming into the factum of petition, the above suit was decreed on 16.06.2011 for directing the respondent to execute the sale deed of the petition property in favour of the petitioner within 3 months. It seems that the respondent failed to execute the sale deed in favour of the petitioner till date. Considering the same, this court is of the considered view that the petition could be allowed.

In the result, the petition is allowed. For draft sale deed call on 05.10.2021.

Dictated to the steno-typist directly, and typed by him, corrected and pronounced by me in open court, this the 21st day September 2021.

Sd/- S.R.Babu

Principal District Munsif-cum-
Judicial Magistrate, Gudalur

List of Exhibits Marked

On the side of petitioner: Nil

On the side of respondent: Nil

List of Witness Examined

On the side of petitioner: Nil

On the side of respondent: Nil

Sd/-S.R.Babu

Principal District Munsif-cum-
Judicial Magistrate, Gudalur

21.09.2021

