



IN THE COURT OF DISTRICT MUNSIF, THIRUVADANAI.

PRESENT: Thiru.D.Manishkumar, B.Sc., B.L(Hons).,
District Munsif,
Thiruvadanai.

Friday, the 30th day of June 2023

EP.No.1/2021
in
OS. No.52/2003

Pazhanivel

...Petitioner/Decree Holder

Vs

1. M.Ramu

2. T.Ramu

3. Ramanathapuram Samasthanam Devasthanam through its Diwan

...Respondents/Judgment Debtors

For Petitioner	Mr.K.Ramesh
For Respondents	R1 - Set exparte, R2 and R3 – Mr.S.B.Kannan



Relief claimed	Order 21 Rule 35 of CPC
Final hearing	14.06.2023

Upon hearing of the decree holder and Respondents' side and perusal of connected records. This court delivers the following,

ORDER

The decree-holder submitted that he had obtained a decree of declaration and recovery of possession from this court against the judgment debtors on 17.06.2008 and as a consequence filed this petition under order 21 rule 35 of CPC for recovery of possession of the scheduled property from the judgment debtors.

2. Schedule of property which need to recovered from the Judgment Debtors is reproduced as follows:

இராமநாதபுரம் மாவட்டம், திருவாடாணை வட்டம், திருவாடாணை



குருப், திருவாடானையில் 3 வது வார்டு, சன்னதித்தெருவில்,

மனைவரி பட்டா எண்.471 ல் கண்ட

பழைய நத்தம் புல எண்.303/3 பார்ட், தற்போதைய வரிதிட்ட

சர்வேப்படி புதிய புலஎண்.427/8 ல் கிழமேலாக 10 அடியும்,

தென்வடலாக 6 3/4 அடியும் உள்ள மனையிடம், கதவு எண்.3/5

இதற்கு நான்குமால் விபரம்

வாதியின் கடைக்கும் - வடக்கு

வாதியின் காலி மனையிடத்திற்கும் - கிழக்கு

அபிமன்னன் பூக்கடை வைத்திருந்து

காலிசெய்துள்ள வாதிக்கு பாத்தியமான இடத்திற்கு - தெற்கு

சன்னதித்தெருவிற்கும் - மேற்கு

3. After taking this execution petition on file, the summons was served to the judgment debtors and even though sufficient time was given 1st Judgment debtor had failed to turn before this court, hence 1st JD was set exparte on



16.04.2021. The 2nd and 3rd Respondents' sides appeared and filed a counter stating that this petition is barred by the limitation and the Respondents had preferred an appeal before the 1st appellate court and the said court closed the appeal by directing the decree-holder to amend the decree. Further, the decree-holder preferred a CRP before the Hon'ble high court challenging the said order and the CRP also disposed of with the same direction and additionally directed the decree-holder to report the same to the 1st appellate court. The decree-holder failed to comply with the said directions.

4. Point for the determination:-

Whether this petition deserves to be allowed or not?

- i. Both sides heard. Based on the Perusal of this bundle, this court finds that the Judgment debtor preferred an appeal against this decree and the same was closed by the 1st appellate court on the direction to the decree-holder to rectify the errors on the decree. And also directed the Judgment debtor to file a decree after the rectification by the original court. Challenging the 1st Appellate Court's order, the decree-holder preferred Crp and Hon'ble High Court reiterated the 1st Appellant Court's order.



- ii. Further, as a consequence of the petition filed by the decree-holder the decree was rectified by the original court by the order dated 21.07.2012 and the counsel for the decree-holder stated that the rectification of the decree was reported to the 1st Appellant's court registry. The main contentions of the 2nd and 3rd Respondents are the decree-holder failed to comply with the order of the High Court by not reporting the rectified decree. It is pertinent to state the settled principle of law that even mere pendency of appeal will not operate as a stay for the execution proceeding unless and until there is an order of stay. Thus this court concludes that this decree is executable as per the wings of law.
- iii. The 2nd and 3rd Respondents also stated that this execution petition is barred by limitation. It is well known that the limitation to execute the decree of recovery of possession is 12 years from the date of the decree. In the present case, the decree was passed on 17.06.2008 and the limitation to execute this decree is up to 17.06.2020; however, this EP filed on 21.12.2020 belatedly beyond 12 years. It is necessary to point out the Hon'ble supreme court's case titled ***'Babasaheb Raosaheb Kobarne and another Vs. Pyrotek India Private Limite***



d and others', it has been specifically observed that due to the Covid-19 situation, the period from 15.03.2020 till 28.02.2022 should be excluded for the purpose of limitation, as may be prescribed under any General or SPECIAL LAWS, in respect of all judicial or quasi-judicial proceedings. Hence this petition is not barred by limitation.

- iv. Therefore it is clear to this court that the 1st judgment debtor ought to have handover the possession to the decree-holder in view of the decree passed. Further, since there is no legal stay or bar to execute this decree against the Judgment debtors, this court has no option except to execute the decree which attained finality. Therefore this court concludes that the decree-holder is entitled to execute the decree for recovery of possession against the Judgment debtors.

5. Result:

As a result, the Execution petition is allowed and the Judgment debtors are hereby directed to deliver the vacant possession of the scheduled suit property to the Petitioner/decreed Holder else the decree holder is authorized to take over



the possession through court bailiff from the Judgment Debtors. No order for cost. Delivery by 24.07.2023 . Batta within three days.

Dictated to the typist, transcribed by her, corrected, and pronounced by me in open Court, on the 30th day of June 2023.

District Munsif,
Thiruvadanai.