

Muthiah thevar and Three ors. Vs. Chellathai and Five ors.

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SooperKanoon Citation : sooperkanoon.com/820737

Court : Chennai

Decided On : Jan-19-1996

Reported in : 1996(1)CTC167

Judge : Jagadeesan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 18(2)

Appeal No. : C.R.P. No. 3118 of 1995

Appellant : Muthiah thevar and Three ors.

Respondent : Chellathai and Five ors.

Advocate for Pet/Ap. : N. Damodaran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Jagadeesan, J.

1. The petitioners-defendants 6,7,9 and 10 in O.S. No. 253 of 1986 on the file of District Munsif, Sivakasi have filed this civil revision petition against the fair and final decree in E.P.44 of 1995 in O.S.No.253 of 1986 dated 22-9-1995. The first respondent herein who is the contesting party had been served with the summons.

But he has not chosen to appear either in person or through counsel. The remaining respondents 2 to 6 had been given up since they remain ex parte before the Court below.

2. The petitioners are respondents 6,7,9 and 10 in E.P. No. 44 of 1995 on the file of District Munsif, Sivakasi. They are the defendants in the suit. The first respondent herein/plaintiff filed the suit for partition and the final decree was passed by the lower Court. Pursuant to the final decree the plaintiff filed Execution Petition to get separate possession of her share. The petitioners herein filed objection stating that the final decree has not been engrossed in the non-judicial stamp papers and as such it cannot be executed. Further with regard to the division of the property also objection has been raised. But the lower Court has overruled the objections and passed order in the Execution Petition. In the said order the lower Court has categorically found that there is no force in the contention of the petitioners with regard to the description of property and also with regard to the objection that the decree has not been engrossed in the non-judicial stamp papers. The lower Court has totally failed to consider that after the execution petition has been disposed of, the decree passed in the original suit cannot be amended. Further, without engrossing the final decree in a non-judicial stamp papers, the final decree cannot be put to execution. The Court below has observed that the final decree can be engrossed in the non-judicial stamp papers subsequently. When it is the condition precedent that the terms of the final decree have to be engrossed in non-judicial stamp papers, then without engrossing the terms of the final decree in the non-judicial stamp papers, the decree cannot be executed. Further it has been held in a recent judgment by the Supreme Court reported in *Shankar Balwant Lokhande (dead) by L.Rs. v. Chandrakand Shankar Lokhande and Anr.*, 1995 (I) L.W. 568 as follows:-

'As to Maksudan's case, : AIR1983 Pat105 , we state that it had not been correctly decided. Limitation does not begin to run from the date when direction is given to pass final decree. Mere giving of direction to supply stamped paper for passing final decree does not amount to passing a final decree. Until the final decree determining the rights of the parties by metes and bound is drawn up and engrossed on stamped papers) supplied by the parties, there is no executable

decree. In this behalf, it is necessary to not (sic.) that Section 2(a) of the Bombay Stamp Act, 1958, as amended by the local Act, provides that a decree of civil court is required to be stamped as per Article 46 in Schedule I. Section 34 thereof lays down that 'no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped.' Therefore, executing Court cannot receive the preliminary decree unless final decree is passed as envisaged under Order 20 Rule 18 (2), After final decree is passed and a direction is issued to pay stamped papers for engrossing final decree thereon and the same is duly engrossed on stamped paper (s), it becomes executable or becomes an instrument duly stamped. Thus, condition precedent is to draw up a final decree and then to engross it on stamped paper(s) of required value. These two acts together constitute final decree, crystallizing the rights of the parties in terms of the preliminary decree. Till then, there is no executable decree as envisaged in Order 20 Rule 18(2), attracting residuary Article 182 of the old Limitation Act. Contrary views of the High Courts, are not good law '

3. Pursuant to the Judgment referred supra, the order of the lower Court in E.P. No. 44 of 1995 in O.S. No. 253 of 1986 is set aside. The Lower Court is directed to grant time for (he plaintiff in the said suit O.S.No.253 of 1986 for submitting the stamp papers and if the plaintiff deposits the stamp papers, the lower Court can thereafter proceed with the execution of the abovesaid decree.

4. With the above observation, the civil revision petition is allowed.