

**R. Devadass Vs. the Subordinate Judge,**

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**SooperKanoon Citation :** [sooperkanoon.com/829194](http://sooperkanoon.com/829194)

**Court :** Chennai

**Decided On :** Aug-26-2003

**Reported in :** AIR2004Mad249

**Judge :** S.R. Singharavelu, J.

**Acts :** [Constitution of India](#) - Article 227

**Appeal No. :** Civil Revision Petition (PD) No. 379 of 2002, Civil Revision Petition (NPD) No. 476 of 2002 and CMP.

**Appellant :** R. Devadass

**Respondent :** The Subordinate Judge, ;r. Sakthivel and T. Rojasundaram

**Advocate for Def. :** S. Rajeswaran, Adv. for Respondent-2

**Advocate for Pet/Ap. :** N.L. Rajah, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**S.R. Singharavelu, J.**

1. As against the return of the applications of the revision petitioner made by the Executing Court in making an obstruction in delivery of possession, these revision

petitions have been preferred under Article 227 of The [Constitution of India](#).

2. There were two such applications filed by the revision petitioner on 13.3.2002 and in both of which, orders of return were made requiring him to quote the law under which he has preferred those applications and also to show as to why he has not issued notice to the other side. Aggrieved by that, these revision petitions have been filed.

3. There was an agreement of sale in between the respondents 2 and 3, by name Sakthivel and Rojasundaram, who has got three sons - the revision petitioner - Devadass, Pandian and Karunakaran. That agreement was dated 16.7.1987 in respect of an extent of 4.53 acres of land situated at Madhavaram. Based on the sale agreement, a suit for specific performance was filed in O.S. No. 372 of 1998 by the second respondent against the third respondent and in which, a compromise was arrived at in a Lok-Adalat held on 13.11.2000. It is in pursuance of which, the execution petition for delivery was filed and the delivery was also ordered in the month of February 2002.

4. In the meantime, the revision petitioner filed a suit for partition only in respect of the above said extent of land i.e 4.53 acres in O.S. No. 6 of 2000 on the file of the Subordinate Court, Ponneri against his father - the third respondent herein and his brothers - Pandian and Karunakaran wherein he also included the second respondent - Sakthivel also as a party defendant. He also filed interlocutory applications to nullify the agreement in favour of the second respondent and further proceedings, but in vain. The revision petitioner again preferred a suit in O.S. No. 74 of 2001 to set aside the decree passed in O.S. No. 372 of 1998. He has also filed an interlocutory application virtually for stalling the execution proceedings and the same was dismissed.

5. One of his brothers - Karunakaran filed a writ in WP. No. 21662 of 2000 wherein an order was passed on 3.1.2001 holding that as the kartha of the joint family, the agreement entered into by the third respondent herein will also bind his sons including the writ petitioner and the writ was dismissed. Challenging the compromise decree, the petitioner preferred CRP. No. 3657 of 2000, which was also dismissed on 14.12.2000.

6. From the above materials, we are able to find that the revision petitioner was aware of the fact of agreement, which had culminated into a decree for specific performance from the inception and this fact has also been admitted in paragraph 6 of his affidavit in CRP. No. 379 of 2002. Having failed in all his attempts, the revision petitioner filed two applications on 13.3.2002, which were returned without being taken on file.

7. Learned counsel for the revision petitioner drew my attention to proviso to Order XXI Rule 97 of the Civil Procedure Code and contended that he has got a right of adjudication, which he was deprived. Reliance was placed on the judgment in the case of *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* : [1997]1SCR463 , which was also a case where a stranger to the decree has preferred a petition under Order XXI Rule 99 of the Civil Procedure Code after losing possession wherein it was held that even prior to his dispossession, he can apply under Rule 97 of Order XXI of the Civil Procedure Code seeking adjudication upon his resistance or obstruction. It was also held that both the types of enquiries either prior to or subsequent to dispossession in connection with the right, title and interest of a stranger to the decree, are clearly contemplated by scheme of Order XXI and it is not as if such a stranger to the decree can come into picture only at the final stage after losing the possession and not before it even if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.

8. Reliance was also placed on the judgment in the case of *Tanzeen-e-Sufia v. Bibi Haliman* : [2002]SUPP2SCR8 wherein it was observed that such an application is envisaged under Order XXI Rule 97 of the Civil Procedure Code and that being the position, it entitles the third party to be heard before passing any order on the application moved by the decree-holder.

9. Thus, it is made clear that the stranger to the decree before execution of the same is entitled to get adjudication of his cause for obstruction. I am in agreement with the legal proposition that the stranger to the decree like the revision petitioner is entitled to get adjudication that he makes.

10. The question before this Court is as to whether there is any adjudicable material on his behalf. This is so because the Courts have got a duty to protect the interests of the decree-holder as against the mala fide obstructors, who may have an intention to stultify the proceedings of execution. It is not wrong on the part of the Executing Court to examine the availability of the adjudicable matters in the application of obstruction filed by the stranger to the decree. A blind and stereotyped method of receiving and activating every application without knowing as to whether it is bona fide or mala fide is an unhealthy trend and before an application is entertained, especially at the state of execution of a hardly won decree, the Executing Court has got an inherent duty to search for the availability of the bona fide adjudicable material. It is in that process, the Executing Court returned the application granting two weeks time for the obstructor not only to quote the law under which he has filed the application, but also to issue a notice to the decree-holder.

11. In this context, it is to be noted that no stay of operation of decree was sought for by the stranger/obstructor and no argument was also advanced on that behalf. It is, therefore, very much necessary for this Court to see as to whether any prima case is made out on behalf of the obstructor so as to order for further proceedings in his application under Order XXI Rule 97 of the Civil Procedure Code and also to order restitution under Section 144 of the Civil Procedure Code, so that the possession delivered in the execution petition could be put to its original position making the parties in a combatible position.

12. Learned counsel for the second respondent had drawn my attention to the various attempts made by the revision petitioner from the inception to paralyse the execution of the decree and contended that he could not achieve his object. Different kinds of applications and proceedings in various Courts have disintitiled the revision petitioner of his claim to be heard as it was successfully resisted and made to understand that it is a baseless claim.

13. The proceedings in O.S. Nos. 6 and 74 of 2000, CRP. No. 3657 of 2000 and WP. No. 21662 of 2000 were all brought to my notice. Even now, by the test of non-availability of other properties for partition would, at least, make this Court to

understand the bona fides of the revision petitioner in making a claim for partition in the particular piece of land i.e 4.53 acres, in which, his father entered into a compromise decree for specific performance in the Lok Adalat held on 13.11.2000.

14. If there are other properties available for partition, this Court can direct the revision petitioner to work out his equities in such a way to allot the decreed property in the share of his father and be satisfied in getting the share of the petitioner in the other properties. It is in this view, when it was asked about the other properties available for partition, nothing substantial was said on behalf of the revision petitioner and the learned counsel for respondent-2 submitted that on the other occasion in the remaining proceedings the petitioner himself did not answer in the negative. It is also not the case of the revision petitioner that the other properties are all un-important properties of lesser value than the instant one and that is why he is helpless in agreeing to get the said 4.53 acres allotted to the share of his father. This aspect was also not disputed by him.

15. In the absence of these things, this Court is only able to find that it is only to prevent the execution of the decree, mala fide methods are adopted by the revision petitioner. Thus, this Court is able to find that there is no prima facie adjudicable matter in his favour. Further, as mentioned in the order in WP. No. 21662 of 2000, the third respondent herein is competent as a kartha of the family to enter into any sale agreement in order to bind the other members of co-parcenary. Looked in that angle also, I find no prima facie case made out in favour of the revision petitioner.

16. For the forgoing reasons, these petitions are dismissed. No costs. Consequently, the above CMPS are also dismissed.

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