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Court : Chennai

Decided On : Oct-15-2003

Reported in : 2003(4)CTC372

Judge : S. Ashok Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151; Civil Rules of Practice - Rule 76

Appeal No. : C.R.P.(PD) No. 2351 of 2001 and C.M.P. No. 12527 of 2001

Appellant : Athmajothi @ Krishnamurthy and anr.

Respondent : K. Jothimani

Advocate for Pet/Ap. : P. Rathinadurai, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. This revision has been filed by the respondents/plaintiffs against the order passed in E.A.No. 1 of 2000 on the file of the Court of the Subordinate Judge, Tiruvarur, dated 12.4.2001 allowing the above said E.A. filed by the respondent herein/the third defendant in the suit.

2. The respondent herein/third defendant in the suit filed the application under Rule 76 of the Civil Rules of Practice read with Section 151 of the Code of Civil Procedure to send for certain documents in proceedings E.A.No. 1 of 2000 in E.P.No. 4 of 2000 in O.S.No. 48 of 1984 during the execution of the final decree proceedings.

3. In the said application, the third defendant/respondent herein has prayed for send for certain documents from the office of the Director of Indian Medicine and Homeopathy relating to the appointment order in the name of one Krishnamoorthy; from the Assistant Commissioner of Archives, Egmore, Madras relating to Gazettee in the name of one T.V.Stalin @ Krishnamoorthy and relating to the name of Thangavelu @ Jagannatha Pillai; and also from the Registrar, Tamil Nadu Board of Indian Medicine the letter written to the Commissioner, Panchayat Union, Mannargudi in the year 1995 for the purpose of proving that the name of the first plaintiffs father was T.V.Stalin, who changed as T.Krishnamoorthy, whereas the real name was only R.T.Velu and not Jagannatha Pillai, and the title for the property was claimed under a fictitious name.

4. The first respondent in the said application filed a counter stating that as per the partition 1.9.1943, an ex parte order was passed against Kuppusamy Pillai, father of the third defendant/respondent herein. The said Kuppusamy Pillai filed I.A.No. 181/87 to set aside the ex parte order and pending trial, the said Kuppusamy Pillai died on 20.10.1987 and therefore, the third defendant/respondent herein filed an application to implead himself as legal heir for the deceased Kuppusamy, which was allowed on 22.08.1989. However, the application to set aside the ex parte order was dismissed and thereafter, a Commissioner was appointed to divide the property. Subsequently, the third defendant/respondent herein filed I.A.No. 59/95 to set aside the final decree dated 31.12.1991, which was also dismissed and during the execution proceedings, the third defendant / respondent herein was filing application after application to delay the execution proceedings, and this application is one such application, wherein he has alleged that the first plaintiffs father, namely, R.T.Velu @ R. Thangavelu, is not Jagannathapillai. According to the petitioner, during the said proceedings, the first plaintiff/first petitioner has already proved as the son of Jagannathapillai and the said fact has been proved

by the various documents filed in O.S.No. 48/84 and I.A.No. 73/87.

5. However, the learned Subordinate Judge, Thiruvarur, allowed the application filed by the third defendant/respondent herein, and aggrieved over the same this Civil Revision Petition has been filed.

6. A perusal of the earlier proceedings clearly shows that in O.S.No. 160 of 1981 on the file of the District Munsif, Mannargudi, documents have been filed to prove that the name of the father of the first plaintiff therein was only Jegannatha Pillai alias Anandam Pillai. Even in the instant suit, preliminary decree was passed in I.A.No. 645/90. The respondent and others who are legal representatives of Kuppusamy Pillai were impleaded as parties, and final decree was passed on 31.12.1991. The attempt of the third defendant/respondent herein to set aside the final decree by an application I.A.No. 59/95 was also dismissed with costs. After E.P.No. 32/92 on the file of the Court of the Subordinate Judge, Pattukottai was transferred to the file of the Court of the Subordinate Judge, Tiruvarur, again this application has been filed.

7. In O.S.No. 160/81 filed by the plaintiffs/petitioners herein on the file of the District Munsifs Court, Mannargudi, a specific issue has been framed whether the first plaintiff is not the son of Jagannatha and the Court has found that the first plaintiff/the first petitioner herein is the son of Jegannatha born through his mother Pattu Roja and also has held that the first defendant therein is not the legally wedded wife of Jagannatha. An appeal in A.S.No. 33/83 was filed by one of the defendants, by name, Kamalambal. The title to the property of Jagannatha Pillai was confirmed and the judgment and decree of the lower Court were confirmed by the Subordinate Judge, Pattukkottai.

8. Raising the same contentions as in E.A.No. 1 of 2000, similar application was filed by the second defendant, by name, K.Kalimuthu, in E.A.No. 46/1996 in E.P.No. 41/93 in O.S.No. 48/84 on the file of the Sub Judge, Nagapattinam and the same was dismissed by an order dated 7.1.1997. Thereafter, once again the third defendant/respondent herein has filed the instant application on 25.7.2000 on the same grounds and it was allowed by the learned Subordinate Judge, Tiruvarur. The plaintiffs are legal heirs of Jegannatha Pillai, has been already decided in

O.S.No. 160/81 on the file of the District Munsif, Mannargudi and also confirmed in A.S.No. 33 of 1983 on the file of the Court of the Sub Judge, Pattukkottai. The decision has become final between the parties. O.S.No. 48/84, a preliminary decree was passed in I.A.No. 645/90 and the execution of the final decree proceedings has also been pending and at this stage, the respondent herein/third defendant has filed this application.

9. In *V.D.Modi v. R.A. Rehman*, : [1971]1SCR66, it has been held that a decree is binding and the Court executing the decree cannot go behind the decree even it is erroneous on law or on facts.

10. In *A.V. Hanifa v. Salima Dhanu*, : AIR1992 Mad111, this Court has held that when a question has been raised before the trial Court and decided by it, the same cannot be again raised in execution proceedings.

11. In *Kuttiammal v. Abraham* 2000 (2) MLJ 433, while condemning the vexatious tactics adopted by the judgment debtor, this Court has held as follows:

'(B) Vexatious tactics - Vexatious tactics adopted by judgment-debtor/tenant - In a proper case, the Court will summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

This is a case where the judgment-debtor and his kith and kin have been successfully keeping the owner of the property at bay by adopting frustrating tactics. If Courts do not step in and deal with a situation like this firmly, the very purpose for which Courts of law have been constituted would be defeated.

This is a case where the decree-holder had been driven from pillar to post by the machinations of the respondents and they have been successfully thwarting his efforts by some proceedings in Court.'

12. The application filed by the third defendant is a classic example of delaying tactics even in execution of the final decree proceedings. The identity of Jagannatha Pillai and the relationship of the plaintiffs have already been proved in the earlier Court proceedings and the same cannot be raised during the execution proceedings. In the above circumstances, this Civil Revision Petition is allowed

and the order of the learned Subordinate Judge, Tiruvarur, passed in E.A.No. 1/2000 in E.P.No. 4/2000 in O.S.No. 48/1984 is set aside. Consequently, C.M.P.No. 12527 of 2001 is closed.

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