

ORDER

Govardhan, J.

1. This revision is against the order passed by the District Munsif, Mayiladuthurai, dated 27.4.1992 in E.P.No. 294/1988 in O.S. No. 343 of 1982.

2. The Execution Petition is for delivery of 88 cents in R.S.No. 201/1 which is in R.S.No. 201/1-A.. The respondent has objected to the delivery of the property contending that the decree is an ex parte one which cannot be enforced and this particular extent of 88 cents is not in the four boundaries mentioned in the petition.

3. After considering the rival contentions of the parties, the learned District Munsif has rejected the objection raised by the respondent and directed delivery of the property through the Commissioner with a direction to find out whether the property described in the petition is in accordance with the decree to be delivered.

4. It is against this order, the judgment-debtor has preferred this revision. The learned counsel appearing for the revision petitioner would argue that the order passed by the executing court is not legal and valid and therefore, it must be set aside in this revision. According to the learned counsel appearing for the revision petitioner, the Executing Court has delegated its powers to enquire and find out whether the delivery could be effected in pursuance of the decree, to the Commissioner and therefore, it is not a valid order. There cannot be two opinions that the duty of an executing court is to give effect to the terms of the decree. We have therefore to find out whether the direction given by the executing court to the Commissioner would amount to delegation of its powers to the Commissioner. The learned counsel appearing for the revision petitioner would argue that a decree is the culmination of a suit which has been filed on a cause of action and as soon as the decree is passed, the original cause of action is merged in it and has no separate existence and in the present case, it cannot be stated that there is a valid decree passed by the trial court. The learned counsel appearing for the revision petitioner would draw the attention of this court to the recitals in paragraph 3 of the plaint wherein the plaintiff has stated that she is having only 88 Kuzhis i.e., the suit properties in the said village bearing R.S.No. 202/1. The learned counsel would also draw the attention of this court to the description of the property in the plaint which shows that the plaintiff has described the property as being an extent of 88 cents. According to the learned counsel appearing for the revision petitioner, when the plaint averments read that the extent of the property is 88 kuzhis, and the description of the same is to the effect that it is 88 cents, and it is not known which is the correct extent, the executing court should have decided the question as to what is the property which has to be ordered to be delivered instead of directing the Commissioner to inspect the property and deliver the same in accordance with the decree. In the decree if the trial Court, it is not stated as to whether this 88 refers to cents or kuzhis. When the plaint averments is to the effect that it is 88 kuzhis and the description of the property in the plaint to the effect that it is 88 cents and the decree is silent as to whether the 88 refers to cent or kuzhi. The learned counsel therefore would contend that the executing court should have made an enquiry to and find out the extent and also the identity of the property regarding which the execution petition has been filed and the direction given to the Commissioner to deliver the property, if it is in accordance with the decree, would amount to delegation of its powers to the Commissioner and it is liable to be set aside. The learned counsel appearing for the respondent would on the other hand argue that there is no dispute with regard to the identity of the property and the defendant, has not challenged the same in the written statement filed by him, since the defendant is aware what is the suit property and the

plaint gives the four boundaries of the property for which the suit has been filed and therefore, there cannot be any dispute regarding the identity of the property. It is a recognised principle of law that the boundaries must prevail as against measurements. The learned counsel appearing for the revision petitioner would argue that the proposition that boundaries will prevail upon measurements cannot be made applicable to the present case, since the plaintiff and defendants are neighbors and the suit property of the defendant and there cannot be any change in the boundaries whether it is 88 cents or 88 kuzhis or even if it is less than 88 cents. Since the description of the property shows that the northern boundary of the suit property is that of the defendants, I am of opinion, that there is considerable weight in this contention of the learned counsel appearing for the revision petitioner that the rule that boundaries will prevail upon measurements cannot be made applicable to the present case.

5. The learned counsel appearing for the respondent would argue that the executing court is bound by the decree even if it is erroneous on law or on facts and therefore, the contention of the revision petitioner that the identity of the property should be established by the executing court holding enquiry' is not a tenable one. It is no doubt true that the executing court cannot go behind the decree even if it is erroneous in law or on facts as per the well-laid proposition as per the decision reported in *V.D. Modi v. K.A. Rehman*. In the decision reported in *M.T. George v. V.R.*

*Kolhatkar*, it has been held that when in execution a question arises as to the identity of the property of which possession has to be delivered to the decree-holder, obviously such a question would relate to the execution of the decree and it would be for the executing court to decide it required under Section 47 of the code and the executing court would do well to hold a proper enquiry and determine the question with regard to the identity of the property which has to be delivered to the applicant. Therefore, when the identity of the property to be delivered is the subject matter of an enquiry in the executing court, the executing court has the powers to enquire to hold the validity of the decree. In the decision reported in *Bhavan Vaja v. Solanki Hanuji*, it has been held as follows:-

"It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree, the court often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the executing court and if that court fails to discharge that duty it would be deemed to have failed to exercise the jurisdiction vested in it."

These decisions show that the executing court can go beyond the decree and hold an enquiry to find out the true effect of the decree. In the present case, the description of the extent is not stated as kuzhi or cent. The plaintiff averments show that it is only "kuzhi". The description of the property in the plaint is 88 cents. Therefore, the executing court should have gone into the question to find out whether it is 88 cents or 88 kuzhis before ordering delivery. But, instead of deciding it, the executing Court has directed the Commissioner to deliver the property if it is in accordance with the decree. Therefore, I am of opinion that the contention of the learned counsel appearing for the revision petitioner that the order passed by the executing court is not legal and valid, is well-founded. This conclusion is also confirmed by the report of the Commissioner, which has been filed in court. The Commissioner in his report, has stated that 44 cents in the portion marked as DCH.F.E in the 88 cents, alone is there, within the four boundaries mentioned in the plaint and 44 cents which is on the northern side of D C A in R.S. No. 201/1-A is not within the four boundaries and therefore, he could not deliver the same. From the report of the Commissioner, it is seen only 44 cents out of 88 cents, is within

the four boundaries mentioned in the plaint description and the delivery could be effected only for the said 44 cents and deliver could not be effected for the remaining 44 cents, since it is not within the four boundaries. This would only show that the contention of the revision petitioner that the entire 88 cents is not the suit property, is not in vain. Therefore, I am of opinion that the order passed by the learned District Munsif in the E.P.No. 294/1988 is liable to be set aside.

6. In the result, the Civil Revision Petition is allowed setting aside the order passed by the learned District Munsif, Mayiladuthurai, in E.P.No. 294/1988 and the said E.P.No. 294/1988 is dismissed. No costs.