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C.R.P(MD).No.901 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2023

Pronounced on : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.901 of 2023

1.Mohan
2.Manoharan
3.Mathavan
4.Mahendran

... Petitioners/Petitioners/Petitioners/
Defendants 1 to 4

Vs.

1.Dinakaran
2.V.K.Valasekar
3.V.K.Ramesh
4.V.K.Mathiprakasam
5.Prince Jebaraj
6.Devadoss

... Respondents/Respondents/Respondents/
Plaintiffs

PRAYER:- This Civil Revision Petition has been filed under Section 115 of CPC, to call for the records and set aside the fair and decretal order dated 19.12.2022 in EP.No.19 of 2021 in IA.No.874 of 2018 in O.S.No.489 of 2015 on the file of the Principal District Munsif, Thoothukudi.

For petitioners : Mr.S.Selva Aditya



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ORDER

The petitioners are aggrieved by the impugned order, dated 19.12.2022, passed in E.P.No.19 of 2021 by learned Principal District Munsif, Thoothukudi.

2. By the impugned order dated 19.12.2022, the learned Principal District Munsif, Thoothukudi, has dismissed E.P.No.19 of 2021. The relevant portion of the impugned order reads as under:

“மேற்சொன்ன முன்தீர்ப்பு வழிகாட்டுதலின் படியும் இம்மனு பொருண்மைகளை பொருத்தி பார்க்குமபோது அசல் வழக்கு மேல் நடத்தப்படாமல் விடப்பட்டுள்ள நிலையில் இடைநிலை மனுக்களும் முடிவிற்கு வந்துவிட்டன. ஆதலால், அசல் வழக்கின் மூலம் இந்த மனுதாரர்களின் உரிமைகள் இறுதியாக உறுதி செய்யப்படாத நிலையில் இடைநிலை மனுவில் உள்ள உத்தரவை நிறைவேற்றம் செய்ய மனுதாரர்கள் கோருவது ஏற்புடையதல்ல என இந்நிதிமன்றம் தீர்மானிக்கின்றது.

முடிவாக, இம்மனுவானது தள்ளுபடி செய்து உத்தரவிடப்படுகிறது. மனுவின் தன்மையை கருதி செலவு தொகை இல்லை.”

3. The petitioners were the defendants before the Principal District Munsif, Thoothukudi, in O.S.No.489 of 2015, filed by the respondents. The respondents have filed the above suit for permanent injunction to restrain the petitioners from interfering with the peaceful possession of the property. It appears that the respondents were putting up constructions and therefore, the said Court had ordered *status quo* to be maintained on 14.08.2018 in I.A.No. 405 of 2018.



4. It is submitted by the petitioners that despite *status quo* being ordered, respondents/plaintiffs in O.S.No.489 of 2015, continued to put up construction. Therefore, the petitioners were constrained to file I.A.No.874 of 2018 to restore the status quo.

5. It is the further case of the petitioners that I.A.No.874 of 2018 was ordered in their favour by the learned Principal District Munsif, Thoothukudi, on 24.09.2018 to remove the encroachments. It is further submitted that after the aforesaid order was passed, the respondents eventually withdrew the suit as not pressed on 24.01.2020. Accordingly, the suit was dismissed.

6. In these circumstances, the petitioners filed E.P.No.19 of 2021 to implement the order, dated 24.09.2018 passed in I.A.No.874 of 2018 filed by the petitioners. It is submitted that the Trial Court has erroneously dismissed the application.

7. The point for consideration is whether the petitioners are entitled to the relief of execution of proceedings under Order 21 of CPC till the implementation of the interim order passed pending the suit, which has been subsequently dismissed on 24.01.2020.



8. In support of the impugned order, the learned counsel for the petitioners has placed reliance on Order 21 Rule 32(1) of CPC, which reads as under:-

"32.Decree for specific performance for restitution of conjugal rights, or for an injunction:-

1.Where the party against whom a decree for the specific performance of a contract, or for restituion of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

9. Specifically, the learned counsel for the petitioners has drawn the attention of this Court to Section 36 of CPC, which reads as under:-

"36.Decree for delivery of immovable property when in occupancy of tenant:-

Where a decree is for the delivery of any immovable property in the occupancy of a tenant of other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property."

10. It is therefore submitted that even though the petitioners were defendants in the suit, they secured an interim order on 24.09.2019 in I.A.No.



874 of 2018 to direct the respondents to remove the construction, which was put up contrary to the *status-quo* order passed on 14.10.2018 in I.A.No.405 of 2018 in O.S.No.489 of 2015.

11. I have heard the learned counsel for the petitioners and also perused the material available on record.

12. In my view, there is no case made out for interfering with the impugned order. The petitioners/defendants could not ask for execution of an interim order, directing demolition of the construction allegedly put up by the respondents/plaintiffs, pending disposal of the suit, contrary to the status quo ordered on 14.08.2018 in I.A.No.405 of 2018. If at all, remedy if any, that is available to the petitioners/defendants is under Order XXXIX Rule 2-A of C.P.C., which reads as under:-

"ORDER XXXIX

Temporary injunctions and interlocutory orders

Temporary injunctions

2-A. Consequence of disobedience or breach of injunction. -

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which



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the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

13. In my considered view, the Trial Court has come to a just conclusion while dismissing the application filed by the petitioners/defendants for execution of an order dated 14.08.2018, for directing removal of the construction put up by the respondents/plaintiffs contrary to the status quo ordered on 14.08.2018. Therefore, the present Civil Revision Petition is dismissed. No costs.

13.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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The Principal District Munsif,
Thoothukudi.



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C.SARAVANAN, J.

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