



C.R.P. No.475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2024

PRONOUNCED ON : 12.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.475 of 2022

1. Dr.J.Pannerselvam
2. Elamathi

... petitioners

Vs.

J.Sampathkumar

... respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.11.2019 made in E.A.No.1454 of 2017 in E.P.No.2536 of 2015 in O.S.No.6797 of 2010, passed by the learned X Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.K.V.Anantha Krishnan

For Respondent : Mr.B.Dineshkumar



C.R.P. No.475 of 2022

WEB COPY

ORDER

This petition has been filed to set aside the fair and decretal order dated 28.11.2019 made in E.A.No.1454 of 2017 in E.P.No.2536 of 2015 in O.S.No.6797 of 2010, passed by the learned X Assistant Judge, City Civil Court, Chennai.

2. The respondent is the plaintiff and the petitioners are the defendants in the suit in O.S.No.6797 of 2010.

3. i) It is the case of the respondent/plaintiff that the suit property was originally belonged to his mother and she died intestate in 1986 and subsequently, his father also died intestate in the year 2006. The respondent is residing in the ground floor of the suit schedule property from the year 1975 and the first petitioner being his brother has occupied the first floor from the year 1985 along with his wife/second petitioner. The respondent is occupying the northern side portion of his exclusive parking and the first petitioner is occupying the southern side front portion to his exclusive parking. The first petitioner had converted his parking area into a staircase



C.R.P. No.475 of 2022

petitioners are liable to pay 50% of the Electricity consumption charges.

Hence, the respondent filed the suit seeking directions and mandatory injunctions against the petitioners.

4.i) The petitioners/defendants filed their written statement stating that the respondent is having 2 split A.C., 1 refrigerator, washing machine, ceiling fans numbering about 5, water heaters and other modern equipments such as computers, home theatre, 29 inch T.V., etc. On the other hand, the petitioners are having only 2 refrigerators, 2 ceiling fans, 2 table fans, one laptop, 20 inch T.V. Hence, the E.B. consumption of the petitioners are only minimum when compared to the respondent. Even though the petitioners paid 50% of EB charges till December 2008, when the petitioners demanded the EB card, the respondent refused to show the same.

ii) It is stated that though there is a gate on the northern side of the house, the respondent has not allowed the petitioners to use the said gate to have access to his house in the first floor. Hence, the petitioners had put up a separate staircase on the southern side of the house during 1992. The petitioners are parking their jeep without any hindrance to anybody much



C.R.P. No.475 of 2022

less to the respondent and his family and never parked their vehicle preventing the respondent from freely having the ingress and egress of his car.

iii) It is further stated that the petitioners are having 2 dogs and cats as pet animals and they have been properly vaccinated and given periodical medical care. The waste water is drained to the sewerage system from the first floor, which is totally concealed and there is absolutely no scope to drain the same into the ground floor. Therefore, there is no cause of action for the suit and the suit is liable to be dismissed.

5. In order to prove the case of the respondent/plaintiff, the respondent was examined as PW1 and Exs.A1 to A5 were marked. On the side of the petitioners, the first petitioner was examined as DW1 and Ex.B1 to B12 were marked.

6. After hearing the rival submissions, the Trial Court decreed the suit partly by granting the relief of mandatory injunctions regarding pet animals and parking of the car and jeep and dismissed the relief as against 50% of



C.R.P. No.475 of 2022

electricity consumption charges and for arrears. Aggrieved over the same, the petitioners preferred an appeal in A.S.No.259 of 2012 on the file of the XVII Additional Judge, City Civil Court, Chennai. The First Appellate Court after hearing both sides modified the judgment and decree passed by the Trial Court by its order dated 15.04.2013 holding that the respondent is entitled for a permanent injunction against the petitioners from parking their vehicle in front of the gate of the suit property and granted mandatory injunction directing the petitioners not to carry out any experiments with the dogs and cats and to remove all the dogs and cats except one dog from the suit property within a period of one month.

7. Thereafter, the respondent filed Execution Petition No.2536 of 2015 on the file of the X Assistant Judge, City Civil Court, Chennai. The petitioners filed a detailed counter affidavit in the above Execution Petition stating that the respondent has filed the Execution Petition after a lapse of 2 years and it is filed with ulterior motive to drive away the petitioners from their lawful possession.



C.R.P. No.475 of 2022

WEB COPY

8. Subsequently, the petitioners filed an application in E.A.No.1454 of 2017 in the said Execution Petition under Section 47 of the Code of Civil Procedure read with Section 151 of CPC to dismiss the Execution Petition on the ground that the decision passed in OS.No.6797 of 2010 on the file of VI Assistant City Civil Court, Chennai cannot be executed in view of the introduction of the new guideline issued by the Animal Welfare Board of India, dated 26.02.2015, which takes away the jurisdiction of the City Civil Court.

9. It is further stated that the respondent has not examined any expert or never asked for appointment of Advocate Commissioner under Section 76 of CPC and not examined the premises with the help of a Health Officer to file a report regarding the conditions of the pets in the premises. The respondent alleged in a bald manner without any documentary evidence that the petitioners conducting experiments on animals. The respondent has not proved the Court with the assistance of a statutory body that experiments on animals are carried out by seeking a report from the said organization. The respondent allegation of nuisance caused by the petitioners' pet is without



C.R.P. No.475 of 2022

any documentary proof. The verdict of the Court that very stationing of the pets will lead to nuisance is based on assumption and presumption.

10. It is further stated that if execution proceedings is taken against a property without impleading the other co-owners of the property as parties thereof, the proceedings are null and void and the decree in respect of the property is a nullity. Further, one co-owner cannot seek injunction against another co-owner, since both the parties to the suit are brothers. It is further stated that the respondent has failed to prove his ownership or title to the property. Unless and until the respondent's title to the suit property is established, the decree in OS.No.6797 of 2010 cannot be executed.

11. It is further averred that the respondent has not instituted the suit for damages stating that the petitioners have kept the pet animals. The decree has not specified any place to shift the petitioners' pets in the event of the pet animals of the petitioners being removed to another location.

12. On the other hand, the respondent has filed a counter affidavit stating that the Trial Court partly decreed the suit and the Appellate Court



C.R.P. No.475 of 2022

also confirmed the Trial Court decree except modifying the relief to retain one dog. In spite of the said judgment and decree the petitioners failed to remove the dogs and cats from the premises. When the judgment passed by Trial Court was upheld by the Appellate Court except for allowing one dog, the petitioners ought to have filed second appeal instead of filing E.A.

13. It is stated that in the above Execution Petition, summons were duly served on the petitioners and they duly entered appearance before this Court as early as in September 2015 and filed their counter in February 2016. After recording of evidence, the case was posted for further proceedings on 01.04.2017. Thereafter, the petitioners have come out with the above petition under Section 47 of CPC without any substance, which is completely an afterthought and in order to protract the proceedings, the present application is filed.

14. It is further stated that the allegation of the petitioners that the judgment cannot be executed in view of the introduction of the new guidelines issued by the Animal Welfare Board of India dated 26.02.2015, which takes away the jurisdiction of the Civil Court, is baseless and made



without knowing the facts of the case or going through the judgment and decree in full. Further, since the suit was not for partition, it is not necessary to implead all the co-owners of the property as party to the suit and hence, non-joinder of irrelevant parties cannot be a ground to take a petition under Section 47 of C.P.C. If the petitioners want to retain control of their pets, it is their duty to find alternative accommodation for their pets. Hence, the respondent sought to dismiss the above said E.A.

15. Before the Execution Court, no witness were examined and no documents were marked by either of the parties.

16. After hearing the arguments put forth by the petitioners and taking into consideration of the counter filed by the respondent and on perusal of the records, the Executing Court dismissed the E.A. observing that the petitioners have not given any valid reasons or objections rendering the decree is inexecutable. It was held that the Court is not required to direct alternative accommodation for the petitioners pets. It was further held that if at all the petitioners were aggrieved by the order of the First Appellate court, they ought to have preferred appeal over the same and cannot agitate such



points not touching the executability of the decree before the Executing Court. Further, it was observed that the other points raised by the petitioners in paragraphs 36 to 42 do not relate to the executability of the decree, but are only factual questions, which were already decided by the First Appellate Court. Aggrieved over the said order, the present Civil Revision Petition is filed by the petitioners.

17. The petitioners are the judgment debtors and the respondent is the decree holder. The first petitioner and the respondent are brothers. The first petitioner is residing in the first floor and the respondent is residing in the ground floor. Originally, the respondent filed a suit in OS.No.6797 of 2010 seeking various reliefs before the VI Assistant City Civil Court, Chennai. The suit was decreed partly on 23rd December 2011 for the relief of mandatory injunctions regarding pet animals and parking area of car and jeep. The suit was dismissed against the relief of direction to pay 50% electricity consumption charges. The petitioners preferred an appeal in A.S.No.259 of 2012 before the XVII Additional Judge, City Civil Court, Chennai. The said appeal was partly allowed by decree and judgment dated 15th April 2013, modifying the judgment and decree dated 23.12.2011



C.R.P. No.475 of 2022

passed by the VI Assistant City Civil Court, Chennai in OS.No.6797 of

2010 and the said decree reads as follows:

“i) that the appellants be and are hereby restrained by way of permanent injunction from parking their vehicles in front of the gate of the suit property.

ii) that the appellants be and are hereby directed not to carry out any experiments with the dogs and cats and to remove all the dogs and cats except one dog from the suit property.

iii) that the time to remove the dogs and cats is one month.”

18. It is an admitted fact that the decree and judgment dated 15th April 2013 passed by the XVII Additional Judge, City Civil Court, Chennai in A.S.No.259 of 2012 has become final due to the reason that the appellants therein, who are the petitioners herein did not choose to file any second appeal against the said decree and judgment. The respondent filed Execution Petition in E.P.No.2536 of 2015. Subsequently, the petitioners herein filed an application in EA.No.1454 of 2017 under Section 47 of CPC seeking to



dismiss the execution petition. After hearing, the Executing Court dismissed the E.A.No.1454 of 2017 by its order dated 28th November 2019. The Executing Court on consideration of the facts and circumstances of the case came to the conclusion that the Executing Court cannot sit on appeal over the decisions rendered by the Trial Court and the First Appellate court. The Executing Court can only resorting to executability of the decree due to lack of jurisdiction of the Court, which granted the decree or fraud being played on the Court.

19. In fact, the grounds raised in the present Civil Revision Petition are the same grounds, which were raised before the Executing Court. While deciding point No.1, the Executing Court categorically held that the objections of the petitioners that the jurisdiction of the Civil Court is being taken away by the guidelines issued by the Animal Welfare Board on 26.02.2015, is not sustainable. While deciding point No.2, the Executing Court held that the objections raised by the petitioners that the decree is not executable due to not impleading the co-owners also is not sustainable in view of the fact that the suit is not filed for partition. While deciding point No.3, the Executing Court held that the Executing Court is not required to



C.R.P. No.475 of 2022

direct alternative accommodation for the petitioners pets and if at all the petitioners were aggrieved by the order of the First Appellate Court, they ought to have preferred an appeal against the same and cannot agitate such points not touching the executability of the decree before the Executing Court. Finally, it is held that there are no valid grounds raised by the petitioners to consider their request.

20. On careful perusal of the order passed by the Executing Court, it appears that there is no infirmity or illegality in the said order. When the decree and judgment of the First Appellate Court has become final, the Executing Court is entitled to proceed with the execution petition filed by the decree holder.

21. During the course of hearing of the Civil Revision Petition, the petitioner No.1 filed an affidavit dated 08.07.2024. In paragraph No.4 of the said affidavit, it is stated as extracted hereunder:

“4. As I do not prolong the litigation without prejudice to the above Construction as per the decree dated 15.04.2023, I am entitled to have only one dog in the suit



C.R.P. No.475 of 2022

property. In other aspects the decree has been complied with.

WEB COPY

It is submitted that the dogs and cats maintained in my residence have been reduced two dogs and one cat and two kitten. All other dogs have been removed from the residence. These pet animals have to be maintained till their life time. I undertake not to bring any new pet animals in future.”

22. On perusal of the contents of the affidavit extracted herein above, it is clear that the petitioners are maintaining 2 dogs, 1 cat and 2 kittens. It is contrary to the decree and judgment passed by the First Appellate Court dated 15.04.2013 in A.S.No.259 of 2012. However, as per the said judgment and decree of the First Appellate Court, mandatory injunction is granted against the petitioners herein not to carry out any experiments with the dogs and cats and to remove all the dogs and cats except one dog from the suit property. The Appellate Court granted one month time to remove the dogs and cats. On perusal of the affidavit filed by the first petitioner, it is clear that he is having 2 dogs, 1 cat and 2 kittens, which is against the judgment and decree of the First Appellate Court. As the judgment and decree of the First Appellate Court has become final, the Executing Court



C.R.P. No.475 of 2022

has to proceed with the execution petition filed by the decree holder in E.P.No.2536 of 2015. As rightly held by the Executing Court that the petitioners have not shown any valid objections rendering the decree inexecutable and accordingly, the Execution Court rightly dismissed the petition in E.A.No.1454 of 2017 filed by the petitioners.

23. For the reasons stated above, this Court does not find any reasons to interfere with the order dated 28th November 2019 passed by the X Assistant Judge, City Civil Court, Chennai in E.A.No.1454 of 2017 in E.P.No.2536 of 2015 in OS.No.6797 of 2010. Therefore, the Civil Revision Petition is liable to be dismissed.

24. Accordingly, the Civil Revision Petition is dismissed.

No costs.

12.08.2024

pvs

Index : Yes / No

Internet : Yes / No



C.R.P. No.475 of 2022

To

1. X Assistant Judge, City Civil Court, Chennai
2. XVII Additional Judge, City Civil Court, Chennai
3. VI Assistant City Civil Court, Chennai



WEB COPY



C.R.P. No.475 of 2022

BATTU DEVANAND, J.
pvs

Pre-delivery Order in
C.R.P. No.475 of 2022

12.08.2024