



C.R.P.(MD)No.1228 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.03.2024

PRONOUNCED ON: 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1228 of 2018

Raju Gounder

: Petitioner/Petitioner/Plaintiff

Vs.

1.Periyasamy

2.Krishnan

3.Govindasamy

4.Kambathi

5.Natarajan

Inspector of Police,

Mayanur Police Station,

Krishnarayapuram Taluk.

: Respondents/Respondents/Defendants

(Memo dated in 26.02.2024 in USR
No.7308 is recorded to the effect that
issuance of notice to the 5th respondent
is dispensed with, as he was set exparte
before the Court below, vide Court
order dated 26.02.2024)

PRAYER:- Civil Revision Petition is filed under Section 115 of the
Code of Civil Procedure against the fair and decreetal order dated



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18.09.2017 made in E.P.No.21 of 2007 in O.S.No.44 of 1994, on the file of the District Munsif Court, Kulithalai.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.K.Prabhakar
for R.2
: No Appearance
for R.4
: R.1 and R.3 died
: R.5 – exparte

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.21 of 2007 in O.S.No.44 of 1994, dated 18.09.2017, on the file of the District Munsif Court, Kulithalai, dismissing the petition seeking orders to punish the respondents 2, 4 and 5 for the disobedience of the decree of the trial Court dated 30.09.1996 and also the appellate Court dated 31.01.2002.

2. The revision petitioner as plaintiff has filed the suit against the respondents 1 to 3 claiming permanent injunction in respect of “A” and



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“B” schedule of suit properties. After full trial, the learned District Munsif, Kulithalai vide judgment and decree dated 30.09.1996 has granted relief of permanent injunction in respect of “B” schedule property and dismissed the suit in respect of “A” schedule of property. The plaintiff has filed an appeal in A.S.No.116 of 1998 challenging the dismissal of the suit in respect of “A” schedule property and the learned Subordinate Judge, Kulithalai vide judgment and decree dated 31.01.2002 by setting aside the judgment and decree of the trial Court dismissing the suit in respect of “A” schedule property and granted permanent injunction in respect of “A” schedule property as claimed by the plaintiff.

3. The plaintiff, by alleging disobedience of the decree against the original defendants 1 to 3 and also against the respondents 4 and 5 alleging that they are colluding with the original defendants and disobeying the decree of the Court, has filed execution petition in E.P.No. 21 of 2007 before the District Munsif Court, Kulithalai. The second defendant has filed a counter statement raising serious objections. The other respondents had remained exparte. During enquiry, the plaintiff/decree holder has examined himself as P.W.1 and exhibited 12



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documents as Exs.P.1 to P.12. The second respondent has examined himself as R.W.1 and adduced no documentary evidence. The Advocate Commissioner who was appointed in the execution proceedings has been examined as Court witness as C.W.1 and through him, his report and plan came to be exhibited as Exs.C.1 and C.2 respectively. The learned Judge of the Executing Court, upon considering the evidence available on records and on hearing the arguments of both sides, has passed the impugned order dated 18.09.2017, dismissing the execution petition. Aggrieved by the order of dismissal, the present revision came to be filed.

4. The main contention of the revision petitioner / decree holder in the execution petition is that the plaintiff has been in possession and enjoyment of the suit properties continuously, that the respondents 2 and 4 even after knowing that the suit properties are in possession and enjoyment of the plaintiff and passing of decrees in his favour, have been attempting to disturb the plaintiff's possession, that they have cut and remove the Neem tree and Portia tree and also broke the door and ceiling tiles and also caused damages to the household articles, that the plaintiff has immediately lodged a complaint with the fifth respondent – Inspector



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of Police, Mayanur Police Station on 24.02.2007 and obtained a receipt therefor, that though the plaintiff has shown the judgment and decree passed by the trial Court as well as the appellate Court to the fifth respondent, the fifth respondent by alleing that the Court orders will not bind him in any way and with the sole intention to help the fourth respondent, has not taken any action so far, but on the other hand, he had taken signatures in white papers from the plaintiff by coercion, that when the same was questioned by the plaintiff, the fifth respondent has informed that he would take criminal action against him, that when the plaintiff has informed about the complaint to the higher officials, the fifth respondent by suppressing the Court proceedings, has furnished wrong particulars, that the respondents 2 and 4 with the help of the fifth respondent have been interfering with the plaintiff's possession of the suit properties in several ways and hence, the plaintiff was constrained to send a legal notice dated 04.03.2007, that since the respondents 2 and 4 were continuing their interference, the plaintiff has also lodged a complaint before the Deputy Superintendent of Police, Karur, on 24.03.2007 and the same was forwarded to the Mayanur Police Staion, but even thereafter the fifth respondent has not taken any action and that since the respondents 2, 4 and 5 have been continuously disobeying the



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decrees of the trial Court as well as the appellate Court, the plaintiff with no other option has laid the execution petition for sending the said respondents to civil prison for disobeying the orders of the Court.

5. The second respondent has raised a stand that his father alone had been looking after the case proceedings, that he was not aware of the disposal of the appeal, that since his father had died, in the meanwhile, he was not informed about the decree passed by the appellate Court, that the contention of the plaintiff that he has been in possession and enjoyment of “A” schedule property is not correct and that he has been taking steps for filing the Second Appeal challenging the judgment and decree passed in A.S.No.116 of 1998.

6. Though the second respondent has alleged that he has been taking steps for filing the Second Appeal, he has not shown that any Second Appeal was filed by him and the judgment and decree of the trial Court as well as the appellate Court were stayed by the second appellate Court. Even before this Court, it is not the case of the second respondent that he has already filed Second Appeal and the same is pending. Moreover, the contention that the second respondent was not aware of



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the disposal of the appeal, cannot also be accepted, as he was a party to the proceedings thereon.

7. The main defence of the second respondent is that they have not interfered with the plaintiff's possession and enjoyment in violation of the decrees of the Court, that the second respondent has been residing in Evur, Ayyampalayam, Musiri Taluk for the past 14 years, that no such incident had occurred as alleged by the plaintiff and the same was invented for the purpose of the petition, that the allegation of the plaintiff that they have cut and removed the Neem tree and Portia tree and broke the house door and ceiling tiles and caused damages to the household articles are false and fraudulent, that the second respondent never interfered with the plaintiff's possession and that he has not caused any damages to any of the property and that therefore, the execution petition is liable to be dismissed.

8. No doubt in the enquiry, the plaintiff as well as the second defendant would depose before the executing Court reiterating the contentions raised in their respective pleadings. It is pertinent to note that an Advocate Commissioner was appointed in the execution



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proceedings and the said Commissioner, after visiting the property has filed his report and plan as Exs.C.1 and C.2 respectively. As already pointed out, the main contention of the plaintiff is that the respondents 2 and 4 have cut and removed the Neem tree and Portia tree and that they had broken the house door and ceiling tiles and that they have caused damages to the household articles. Except the above vague allegations, the plaintiff has not elaborated anything further. As already pointed out, except examining himself, the plaintiff has not chosen to examine any other witness nor produced any evidence to substantiate the allegations.

9. It is pertinent to mention that the Advocate Commissioner in his report has specifically observed that none was in possession of the suti properties at the time of his visit, that the tiled house was in a dilapidated condition, that the house was found to be not in use for a very long time and that there were no household articles in the said property. It is necessary to refer the Commissioner's report hereunder for better appreciation:

“ ஒட்டுவில்லை வீட்டின் ுமற்புற கவரில் விரிசல் காணப்பட்டது. தெற்கு கவரும் அதுபான்று காணப்பட்டது. ஒட்டு வில்லை வீடு கட்டி நீண்டகாலமாகிவிட்டது. ஒட்டுவில்லை வீட்டின் ுமற்புற கவரும்



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விரிசலுடன் காணப்பட்டது. வீட்டிற்குள் ஓடுகள் தெற்குபுறத்தில் உடைந்து காணப்பட்டது. அதற்கு காரணம் ஓட்டுவில்லை கட்டிடம் வெகு காலத்திற்கு முன்பு கட்டப்பட்டதாக காணப்பட்டது. ஏ - பட்டியல் ஓட்டுவில்லை வீடு பூட்டப்பட்டு நேந்தது. ஏ - பட்டியல் சொத்தை பார்வையிடுவதற்கு மனுதாரர் பூட்டை திறந்து விட்டார். மற்படி வீடு வெகுகாலமாக உபயாகத்தில் லேலாது தெரியவந்தது. வீட்டில் மனுதாரர்கள் குடியிருந்ததற்கு வீட்டுப்பொருள்கள் எதுவும் லேலை. மற்படி ஓட்டுவில்லை வீட்டில் ரேண்டு அறைகள் நேந்தன. அறைகளுக்கு மின் லேண்பு எதுவும் கிடையாது. ஏ - பட்டியல் வீட்டிற்கும் கீழ்புறம் உள்ள ராமசாமி வீட்டிற்கும் மிடுக்கும் வகையில் ஒரு சுவர் நேந்தது. வீட்டின் கதவில் கரையான் காணப்பட்டது. சமையல் அறையும் உபயாகப்படுத்தப்படாமல் நேந்தது.

..... காலியிடத்தில் மாமரம்இ எனுமிச்சை மரம்இ மாதுளை மரம்இ உடைந்த முருக்கை மரம் நேந்தது. மரங்கள் பலன்களை கொடுக்கும் வகையில் நேந்தது. மலும் ஓட்டுவில்லை வீட்டிற்கு தெற்குபக்கம் வாழைமரம் நேந்தது. தெற்கு பக்கம் உயிர்வலி நேந்தது. கிழமலில் நேந்தது. மற்படி உயிர்வலி வரைபடத்தில் பச்சை வர்ணமிட்டு காட்டப்பட்டுள்ளது. ஏ மி சி என்ற டேத்திற்கு வடபுறம் காலியிடம் நேந்தது. காலியிடம்இ மகாயில் நிலத்திற்கும் ஏ - பட்டியல் வீட்டுக்கும் டேயில் நேந்தது. மற்படி பாகம் உள்ள காலி டேத்தில் வைக்கால் மபார் மபாட்டு மசகரிக்கப்பட்டு நேந்தது. ஏ மற்றும் மி பட்டியல் ஓட்டுவில்லை வீடுகள் நேந்தது என்றும் சுவற்றில் விரிசல்கள்



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நேந்தது என்றும் வீடு பழமையானதால் ஓடுகள் உடைந்து கிடந்தது.
உடைந்த முருட்கை மரம் காணப்பட்டது. மலும் மறு மரங்கள் எதுவும்
வெட்டப்பட்டதாக காணப்படவில்லை.”

10. Though the plaintiff has alleged that there were traces for removing the Neem tree and Portia tree, the Advocate Commissioner has specifically observed that there were no such traces. Though the plaintiff has raised objections to the Advocate Commissioner's report, he has not taken any steps to scrap the Commissioner's report and to appoint another Commissioner. More importantly, he has not produced any material or evidence to show that the contents of the Commissioner's report are not correct.

11. It is pertinent to note that the houses in the suit property were found to be not in use for a long time and the walls and the ceiling tiles were also not in good condition. It is not the case of the plaintiff that after the incident alleged by him, he has shifted to some other place. He has also not furnished any particulars about the damages caused to the household articles as alleged by him. No doubt, the plaintiff has produced the complaint given to the fifth respondent on 24.02.2007 and



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another complaint to the Superintendent of Police, Karur on 24.03.2007.

Though the plaintiff has alleged that the fifth respondent has not taken any action, as he was helping the fourth respondent, has not lodged any complaint to the higher officials. Though he has alleged that he has informed about his complaint to the higher officials, he has not elaborated anything further.

12. As already pointed out, the respondents 4 and 5 had remained exparte before the executing Court. When service for the fifth respondent is pending in the present revision, the Counsel for the petitioner has filed a memo stating that the fifth respondent remained exparte before the executing Court and that therefore, notice to the fifth respondent may be dispensed with. Whatever it is, though the plaintiff has alleged that his possession and enjoyment of the suit property came to be interfered by the respondents 2 and 4 with the help of the fifth respondent and caused damages to his property, he has miserably failed to prove the same. There is absolutely no evidence to show that the respondents 2, 4 and 5 have disobeyed the decrees of the trial Court as well as the appellate Court. Considering the above, the impugned order dismissing the execution petition cannot be found fault with.



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Consequently, the Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

26.04.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

SSL

To

1. The District Munsif Court, Kulithalai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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26.04.2024