

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4429 of 2015 &

M.P.No.1 of 2015

National Elementary School
Rep. By its Correspondent of
National Higher Secondary School Committee
Registered office at
Neela South Street
Nagapattinam

... Petitioner

v.

1.R.M.Sundaram @ R.Meenakshisundaram
2.S.Rajalakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed on 30.09.2015 made in E.P.No.21 of 2014 in O.S.No.174 of 1986 by the learned District Munsif Court, Nagapattinam.

For Petitioner : Mr.Ravichandran Sundaresan

For Respondents : Mr.R.Murugabharathi

ORDER

Challenging the order passed in E.P.No.21 of 2014 in O.S.No.174 of 1986 on the file of District Munsif Court, Nagapattinam, the judgment debtor has filed the above Civil Revision Petition .

2. The respondents-plaintiffs filed the suit in O.S.No.174 of 1986 for for permanent injunction restraining the judgment debtor from interfering with their peaceful possession of the suit property.

3. The Trial Court decreed the suit and the appeal filed by the revision petitioner was also dismissed on 29.6.1989 confirming the judgment and decree passed by the Trial Court. Against which, the revision petitioner filed a Second appeal in S.A.No.2019 of 1989 before this court and this court also dismissed the Second Appeal on 18.3.2002. Thereafter, the respondents-plaintiffs alleged that the judgment debtor willfully disobeyed the decree for permanent injunction and therefore, filed an Execution Petition in E.P.No.21 of 2014 on the file of District Munsif Court, Nagapattinam under Order 21, Rule 32 of CPC.

4. It is settled position that the Execution Court is bound by the decree passed by the Trial Court. Further, the Execution Court cannot go beyond the decree passed in the suit. When the decree passed by the Trial Court was confirmed by this court in the Second Appeal, the contention of

the judgment debtor that the suit property was acquired in a land acquisition proceeding was handed over to the judgment debtor pursuant to the award dated 9.9.1991, cannot stand for the reason that admittedly this fact was not brought to the notice of this court at the time of disposal of the Second Appeal. The judgment debtor only in their counter has stated for the first time before the Execution Court about the land acquisition proceeding.

5. The learned counsel appearing for the petitioner submitted that there is no willful disobedience of the decree passed by the Trial Court, therefore, the Execution Court ought not to have allowed the Execution Petition. In support of his contention, the learned counsel relied upon a judgment reported in **1990(2) MLJ 411 (Arjuna Gounder v. Govindaraju Reddiar)** wherein this court held that under Order 21, Rule 32 of CPC, the court must be satisfied that the judgment debtor having had opportunity to obey the decree, has willfully failed to obey it.

6. In the case on hand, the Execution Court, while allowing the Execution Petition observed that in the counter filed by the judgment debtor, they themselves have stated that they are using the suit property as a play ground. When there is a decree for injunction staring at them, the counter filed by the judgment debtor itself is sufficient to show that they have disobeyed the order of decree for injunction. Taking into consideration all these aspects, the Execution Court has partly allowed the Execution Petition

by attaching the immovable properties.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.11.2015

Index : Yes/No

Rj

To

The District Munsif Court,
Nagapattinam.

M. DURAISWAMY,J.,

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