

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.1780 of 2012

Antony .. Petitioner

Vs

1.Sivasankaran

2.Siva

3.The Commissioner,
Pallavaram Municipality,
Office at New Colony,
Chrompet,
Chennai – 600 044.

4.Kesavan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decretal order dated 18.10.2011 made in E.P.No.51 of 2005 in O.S.No.1053 of 1989, on the file of the District Munsif Court, Alandur.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.P.Srinivas (for R3)

Mr.N.Nithianandam (for R4)

R1 and R2 – Not Ready

ORDER

The decree holder in E.P.No.51 of 2005 is the civil revision petitioner before this Court, challenging the order passed in E.P.No.51 of 2005 in O.S.No.1053 of 1989, dated 18.10.2011, on the file of the learned District Munsif Court, Alandur.

2.It is the case of the petitioner/decreed holder that he has filed the Civil Suit in O.S.No.1053 of 1989, seeking relief of permanent injunction against the respondent/judgment debtor in respect of the suit schedule of property in S.No.522/1 in Jameen Pallavaram Village, Saidapet Taluk to an extent of 3 cents of land at Kancheepuram District. The said suit was decreed on 27.01.1993, thereafter, this petitioner, who is the decree holder has filed the E.P.No.51 of 2005 before the learned District Munsif Court, Alandur under Order 21 Rule 32 of C.P.C. to punish the 3rd judgment debtor for contempt of Court for violation of decree for permanent injunction by putting him (3rd Judgment debtor) in Civil Prison not exceeding six months. After filing the E.P. by the respondent/judgment debtor on 18.10.2011, the Executing Court viz., the District Munsif Court, Alandur, dismissed the petition by stating that the petitioner has not even submit his arguments and hence the contention of the petitioner is not proper.

The learned Judge also states that the petitioner must strictly prove the fact by adducing necessary evidences, but the petitioner has not done the same. Challenging the order, the present Civil Revision Petition filed before this Court.

3.I heard Mr.T.Dhanyakumar, learned counsel appearing for the petitioner and Mr.P.Srinivas, learned counsel appearing for the 3rd respondent and Mr.N.Nithianandam, learned counsel appearing for the 4th respondent.

4.It is the case of the petitioner/deGREE holder that the suit was filed in O.S.No.1053 of 1989 against this respondent/3rd defendant along with two other defendants before the learned District Munsif Court, Alandur. The petitioner/deGREE holder are further states that the 3rd defendant, who is the judgment debtor in E.P. with utter disregard to the decree passed by the learned District Munsif in O.S.No.1053 of 1989 on 27.01.1993, since by violating the decree passed in the above suit, the 3rd defendant has constructed the canal on the southern side for drainage system and decree holder in the property by putting up a trench 5 feet in height inside along with house wall to a length of 5 feet.

5.The petitioner further states that when the respondent/3rd judgment debtor proceed the construction of canal works, this petitioner/decreed holder has informed the 3rd defendant, who is the Judgment debtor in this E.P. about the decree passed in O.S.No.1053 of 1989, this judgment debtor, who is the 3rd defendant in the suit was without hearing the same had continued the construction by violating the decree. Therefore, he has filed the Execution Petition in E.P.No.51 of 2005 for punishing the judgment debtor/3rd defendant. Though the E.P. has been filed in the year 2005, but after 6 years, the learned Judge has passed an order on 18.10.2011 stating that the petitioner, who is the decree holder must strictly prove the fact by adducing necessary evidences, but the petitioner has not even submitted his arguments, therefore, the contention of the petitioner in respect of the violation of the decree by the respondent/judgment debtor is not proved. Hence, he dismissed the Execution Petition on the same day.

6.The Execution Court must have looked into the Execution Petition filed by the decree holder as per the provision under Order 21 Rule 32 of C.P.C., which clearly states as follows:

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 restitution 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.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [six months], if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds

the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[Explanation.- For the removal of doubts, it is hereby declared that the expression "the act required to

be done” covers prohibitory as well as mandatory injunctions.”

The Execution Court must have directed the decree holder to file an affidavit about the violation and to give evidence in respect of the violation of decree by the respondent/judgment debtor.

7. In this case, on perusal of the record, it clearly shows that there is no affidavit filed by the petitioner/decreed holder or no direction was issued by the Executing Court directed the petitioner to file an affidavit and to give evidence in respect of the violation to be proved by the petitioner/decreed holder.

8. Time and again, this Court and the Hon'ble Apex Court has categorically held that when an injunction decree was violated by the judgment debtor and if any Execution Petition has been filed for punishing the judgment debtor, it is the duty of the Executing Court to take appropriate steps by means directing the petitioner to file an affidavit and to give evidence in respect of violation of the decree by the respondent/judgment debtor. But, in this case, it was totally lack on the part of the Court as well as the petitioner/decreed holder. The Court without following the procedures which was clearly held in the

Civil Procedure Code, the Execution Petition cannot simply dismissed the Execution Petition. Therefore, I am of the firm view that the fair opportunity must be given to the petitioner/deGREE holder by way of directing the decree holder to file an affidavit by following the procedure under the Civil Procedure Code by giving evidence in respect of violation of the respondent/deGREE holder, the Court must have passed an appropriate orders. Therefore, this Court warranting interference in the order passed in E.P.No.51 of 2005 and accordingly the same is liable to be set aside.

9.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in E.P.No.51 of 2005 in O.S.No.1053 of 1989, dated 18.10.2011, on the file of the District Munsif Court, Alandur;

(b) the learned District Munsif Court, Alandur, is directed to dispose of the E.P.No.51 of 2005, by giving fair opportunity to both the parties, by directing the petitioner/ decree holder to file an affidavit and directed both the parties to give evidence and dispose the same within a period of two months from the date of receipt of

a copy of this order. No costs.

14.12.2016

Note: Issue order copy on 13.07.2017

vs

Index: Yes

Internet: Yes

To

The District Munsif Court,
Alandur.

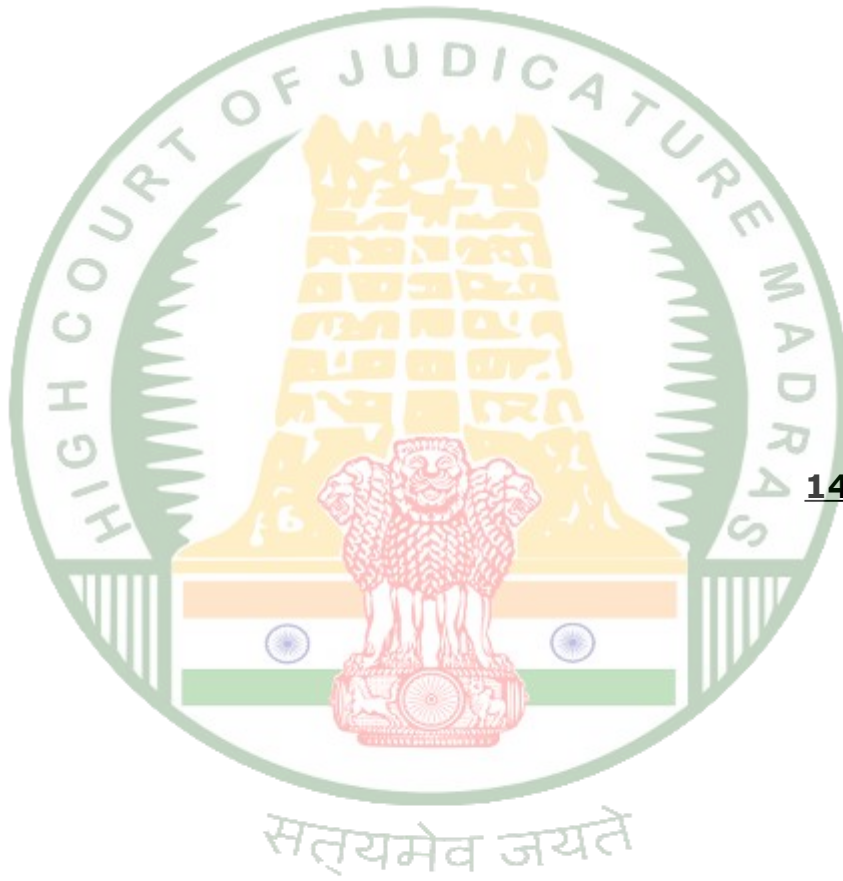


M.V.MURALIDARAN, J.

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