

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2091 of 2016
and C.M.P.No.10929 of 2016

1.Kalaivanan

2.Devendaran

3.R.Palani

... Petitioners

Vs.

1.M.Manoharan

2.The President Town Panchayat,
Sethiyathope Town Panchayat,
Sethiyathope, Cuddalore District.

3.The Executive Officer,
Sethiyathope Town Panchayat,
Sethiyathope, Cuddalore District.

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decretal order of the learned Principal District Munsif, Chidambaram dated 14.08.2015 passed in E.A.No.201 of 2015 in E.P.No.207 of 2008 in O.S.No.426 of 1999.

For Petitioners : Mr.P.R.Thiruneelakandan

For Respondents : Mr.A.Muthukumar (R1)

ORDER

Challenging the order passed in E.A.No.201 of 2015 in E.P.No.207 of 2008 in O.S.No.426 of 1999 on the file of the Principal District Munsif Court, Chidambaram, the Judgment Debtors have filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.426 of 1999 for declaration, permanent injunction and mandatory injunction.

3.The trial Court decreed the suit on 29.02.2008. Pursuant to the decree passed in O.S.No.426 of 1999, the 1st respondent/plaintiff filed an Execution Petition in E.P.No.207 of 2008 in December 2008. The revision petitioners filed their counter in the Execution Petition on 09.04.2009. After a lapse of seven years, the revision petitioners took out an application in E.A.No.201 of 2015 in E.P.No.207 of 2008, which was filed on 14.08.2015 under Order 21 Rule 26 of the Code of Civil Procedure to stay the execution proceedings till the disposal of the suit in O.S.No.180 of 2011 filed by some 3rd parties.

4.Mr.A.Muthukumar, learned counsel appearing for the 1st respondent submitted that the Appeal filed by the 2nd defendant as against the judgment and decree passed in O.S.No.426 of 1999 with a petition to condone the delay in filing the Appeal was dismissed by the Sub Court, Chidambaram and the decree passed in O.S.No.426 of 1999 has become final.

5.Admittedly, the suit in O.S.No.180 of 2011 was filed by some 3rd parties only. The revision petitioners have not challenged the decree passed in O.S.No.426 of 1999. Now, stating that till the pendency of the suit in O.S.No.180 of 2011 filed by some 3rd parties, sought to stay the Execution Petition till the disposal of the said suit. If the revision petitioners are really aggrieved by the judgment and decree of the suit in O.S.No.426 of 1999, they should have challenged the judgment and decree by way of an Appeal, which was not done by the revision petitioners.

6.The learned counsel appearing for the petitioners submitted that the revision petitioners were set exparte before the trial Court and an exparte decree was passed as against them.

7.It is also pertinent to note that the revision petitioners have not filed any application to set aside the exparte decree. Now, after a lapse of more than seven years, the present application has been filed by the revision petitioners to stay the execution proceedings. The Execution Petition itself is pending for more than seven years. When the revision petitioners have filed their counter in the year 2009, they could have challenged the judgment and decree passed in O.S.No.426 of 1999 before the Appellate Court. Having kept silent for all these years, they cannot now seek for stay of the execution proceedings stating that a suit filed by some 3rd parties is pending.

8.It is settled position that the Execution Court is bound by the decree passed by the trial Court. It is also brought to the notice of this Court that the plaintiffs in O.S.No.180 of 2011 have filed an application for injunction restraining the plaintiff in O.S.No.426 of 1999 from executing the decree passed in O.S.No.426 of 1999, which was also dismissed by the trial Court. After the dismissal of the said application, the revision petitioners have approached the Executing Court with the application under Order 21 Rule 26 of the Code of Civil Procedure, which was rightly dismissed by the Executing Court.

9.The learned counsel appearing for the petitioners, in support of his contention, relied upon a judgment reported in **1994 Supreme Court Cases (1) 1 [S.P.Chengalvaraya Naidu Vs. Jagannath]** wherein the Hon'ble Supreme Court held that if a decree was obtained by playing fraud on the Court, the same should be construed as a nullity.

10.Inspite of contending that the 1st respondent had obtained the decree by fraud, it is pertinent to note that the petitioners have not challenged the decree so far (i.e.) even after a lapse of seven years. The silence on the part of the petitioners would establish that the contention now raised before this Court stating that the decree was obtained by fraud cannot be a correct stand.

10.Though there is no quarrel over the proposition laid down in the judgment cited above, since the facts and circumstances are completely different from the case on hand, the said proposition is not applicable to the present case. The Executing Court, taking into consideration all these aspects, rightly dismissed the application.

11. In these circumstances, I do not find any error or irregularity in the order passed by the Executing 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, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

22.07.2016

To

The Principal District Munsif,
Chidambaram.

M.DURAIWAMY,J.
va

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