

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

CRP(NPD) No.3798 of 2017
and C.M.P.No.17663 of 2017

Sundaram ... Petitioner/Plaintiff/Judgment Debtor

Vs.

Thiyagarajan ... Respondent/1st defendant/Decree Holder

Prayer: Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decretal order dated 12.09.2017 passed in E.A.No.30 of 2015 in E.P.No.2 of 2013 in O.S.No.36 of 2008 by the learned District Munsif Judge, Pappireddipatti.

For Petitioner : M/s.A.Rajeswari Karthikeyan

ORDER

The dismissal of E.A.No.30 of 2015 in E.P.No.2 of 2013 in O.S.No.36 of 2008 (by the District Munsif Court, Pappireddipatti), by order dated 12.09.2017 is under challenge in this Civil Revision Petition.

2. The Revision Petitioner/Plaintiff filed the suit in O.S.No.36 of 2008 seeking the relief of mandatory injunction, directing the respondent/1st Defendant to hand over Tractor TCT No.765 LMV to him. Injunction was also sought for against the Police Official (Defendant No.2), directing them not to take action on the complaint preferred by the first defendant against the plaintiff except by following Sections 160 and 154 Cr.P.C.

2.1. The 1st defendant claimed that he is in possession of the Tractor from 20.01.2003 and as the Plaintiff did not hand over RC book to the first defendant, the first defendant was forced to prefer a complaint against the plaintiff to the second defendant.

2.3. The Court, after going into the merits of the matter, dismissed the suit and decreed the counter claim made by the first defendant, directing the Plaintiff to hand over the RC book of the Tractor to the first defendant, within a period of two months.

2.4. This Judgment has been passed on 26.11.2009.

2.5. Later, the first defendant as Decree Holder filed E.P.No.2 of 2013 under Order 21 Rule 22, 37, 38 of C.P.C. seeking an order directing the Plaintiff/Judgment Debtor to hand over the RC book, in default, to arrest him

and send him to civil prison.

2.6. The Plaintiff/Judgment Debtor filed an application under Section 47 C.P.C. read with Section 151 C.P.C. in E.A.No.30 of 2015 alleging that on account of discharge of decree, the execution proceedings have become infructuous and therefore, the Execution Petition must be dismissed.

2.7. The Execution Petition was contested by the Plaintiff / Judgment Debtor on the ground that the original RC book of the Tractor has already been handed over to the Decree Holder on 05.12.2012 through one Mayilsamy (son of Decree Holder) against a receipt issued by the Decree Holder.

2.8. The Decree Holder filed a reply, stating that his son Mayilsamy has severed connection with him long back and in fact, Mayilsamy went to the extent of tendering evidence in favour of the Judgment Debtor in O.S.No.36 of 2008 (that was against his own father) and therefore, the plea of discharge is unreliable.

2.9. The Executing Court has chosen to dismiss the application filed under Section 47 of C.P.C. after pointing out the following dates and events:

(i) Date of Decree : 26.11.2009

(ii) Date of E.P. : 11.10.2012

(iii) Date of handing over (allegedly) RC Book : 05.12.2012 (Ex.P2 Receipt)

(iii) The appearance of Judgment Debtor before the Court : 19.04.2013

(iv) Counter filed in E.P. : 28.03.2014

3. The relevant consideration for the Executing Court was regarding the non-disclosure of handing over of RC Book by the petitioner, either at the time of first hearing or at the time of filing of the counter, which was 11 months after the first appearance. The omission of not filing the receipt (allegedly executed by the Decree Holder) at the earliest point of time, i.e. at the time of filing counter, has been taken note of and commented upon by the Executing Court.

4. The Executing Court has commented that Mayilsamy has not been examined, which is incorrect. Mayilsamy is the person allegedly instrumental in getting the document (receipt) evidencing handing over the original RC book. Mayilsamy has been examined on the side of the Judgment Debtor on 25.01.2016. But, the finding that the receipt has not been legally proved, is correct, as the original receipt has not been filed. In a dispute between the brothers, when the son has chosen to depose not in favour of his own father, but, in favour of his father's brother, his evidence cannot be easily believed

and it has to be scanned carefully. In other words, the blood seems to be not so thicker than water. Therefore, still the issue as to whether the RC book is in the hands of the Judgment Debtor or it has been handed over to the Decree Holder remains a mystery.

5. For the very simple issue of handing over the original RC book of the Tractor, the time taken to get a verdict approximately is four years. The Decree Holder has taken four years time to file the Execution Petition and thereafter, it has been pending for another four years.

6. The issue in the trial stage has been resolved within a period of one year. But, four year time has been spent in execution proceedings. The issue is very simple and the direction to be complied is to hand over the original RC book of the Tractor from the Judgment Debtor to the Decree Holder, who are brothers.

7. The issues in the suit or in the Execution Proceedings do not involve any decision on the basis of complicated question of law or fact. The issue is between brothers, which could have been easily settled either at the intervention of the Court or by referring it to Mediation or Lok Adalat. Either on the date of passing of the Judgment or at the first date of hearing in the Execution proceedings, the Court should have insisted upon handing over the

original RC book in the presence of the Court. The nature of the litigation is too trivial and not worthy of exacting the precious time of the Court, where, the claim of those who are languishing in Jail, those who lost their life or limb in accident and whose liberty had to be decided whether to be in or out of the gaol are pending consideration. The litigants in order to settle their private score use the Court as play grounds and abuse the process of law to suit their whims and fancies.

8. Even though the reasoning given by the Executing Court for non-examination of Mayilsamy is not correct, still the finding is correct on consideration of overall facts and circumstances. The evidence of Mayilsamy cannot be relied upon with regard to handing over original RC book to his father. However, this Court is not inclined to be a mute witness to the diabolic designs or outsmarting moves of the parties herein. Therefore, this Court directs the RTO concerned to issue duplicate RC book to the Tractor bearing Reg. No. TCT No.765 LMV to the Decree Holder, namely, Thiagarajan, the respondent in this revision petition, on production of the copy of this Order, without insisting upon any other formality. But, after getting the duplicate RC book, the legal formalities regarding renewal shall be complied with by the Decree Holder.

9. This Court, in fine, in all its anxiety to observe such sort of callousness and irresponsibility by which the litigants are approaching the Courts, unmindful of the constitutional obligation of the High Courts and Supreme Court to address the problems that would embolden, empower and uplift the Indian society at large, wishes to put forth the following words of caution before knocking at the doors of this constitutional court. The fundamental duties as enshrined in the constitution speaks of the duty of every citizen to respect the Institutions, including High Courts of the constitution and as well as the values and preserve the right heritage of our composite culture. In this case, the petitioner as well as the respondent are enjoined by umbilical chord and indeed brothers. However, they are taking sides and untiring in their efforts to protract the proceedings for nine years up to the highest court of the State, just to settle their private scores in respect of a brittle piece of paper called RC book.

10. In the result, the Revision Petition is dismissed with cost of Rs.5,000/- to be payable to the Government Children Home, R.Gopinathampatty, Morapur, Harur Taluk, Dharmapuri District. Consequently, connected miscellaneous petition is closed.

13.10.2017

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Dr.S.VIMALA, J.

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To

District Munsif Court,
Pappireddipatti.



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