

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2017

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

**C.R.P.(NPD)No.2560 of 2015
& M.P.No. 1 of 2015**

Pichaiyan

.. Petitioner/Judgement Debtor

vs.

Baskaran

.. Respondent/Decree Holder

Revision filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 27.06.2012 passed by the District Munsif Court, Mannargudi in E.A.No.243 of 2010 in E.P.No.52 of 2010 in O.S.No.99 of 2005.

For Petitioner : Mr.P.Sesubalan Raja

For Respondent : Mr. P.T.Rama Devi

ORDER

This Civil Revision has been preferred against the order dated 27.06.2012 passed by the District Munsif Court, Mannargudi in E.A.No.243 of 2010 in E.P.No.52 of 2010 in O.S.No.99 of 2005.

2. The brief facts of this case are as follows:

The petitioner is the first defendant in the suit in O.S.No.99 of 2005. In the aforesaid suit, decree for permanent injunction had been passed on 03.12.2007 after hearing both the parties. Subsequently, the petitioner filed the suit in O.S.No.50 of 2010 suppressing the earlier suit in O.S.No.99 of 2005 and obtained an interim order and demolished the compound wall in the suit property which had been put up by the respondent/plaintiff. The respondent herein filed the aforesaid execution petition in E.P.No.64 of 2008 for disobeying the judgement and decree passed in the aforesaid suit, in O.S.No.99 of 2005. The petitioner/first defendant has filed the present application in E.A.No.243 of 2010 in E.A.No.52 of 2010 in E.P.No.64 of 2008 seeking a direction to amend the decree and the execution petition as per the title deeds and to take possession after the measurement made by the surveyor. The said application filed under Section 47 of CPC before the Court below was dismissed. Against the said dismissal order, the petitioner has filed the present Civil Revision Petition.

3. According to the learned counsel for the petitioner, the petitioner/first defendant was not claiming any right over the property. It is the contention of the petitioner that the respondent/plaintiff has purchased the property without verifying title deeds. The respondent/plaintiff has

mentioned the schedule of property in the sale deed according to his whims. Taking advantage of the undertaking affidavit given by the petitioner in the previous execution petition, the respondent had attempted to encroach the property. Hence, the petitioner has filed the suit in O.S.No.50 of 2010 and obtained an order of interim injunction. Since the respondent/plaintiff had given wrong boundaries in the sale deed and had not chosen to rectify the same, the present application has been filed by the petitioner under Section 47 of CPC. However, the court below without considering the materials available on record had erred in dismissing the said application. It is also submitted by the learned counsel for the petitioner that the interim injunction granted in I.A.No.310 of 2010 in O.S.No.50 of 2010 has not been subsequently extended by the court below.

4. Per contra, learned counsel for the respondent would submit that the application filed by the petitioner in E.A.No.243 of 2010 in E.P.No.64 of 2008 is not maintainable. The respondent herein filed E.P.No.64 of 2008 in O.S.No.99 of 2005 under Order 21 Rule 37, 38 and 55 of CPC for disobedience of the judgement and decree passed by the court below. In the aforesaid E.P., the petitioner has filed an undertaking affidavit that he would obey the decree passed in O.S.No.99 of 2005 and pursuant to the said undertaking, the petitioner filed O.S.No.50 of 2010 and obtained interim order and thereafter,

he demolished the compound wall put up by the respondent/plaintiff. Therefore, the said application in E.A. is not maintainable. Hence, there is no need for warranting interference by this Court. Therefore, the Civil Revision Petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent. Perused the materials available on record.

6. It is an admitted case of the petitioner that a petition under Section 47 of CPC had been filed in E.A.No.243 of 2010 in E.P.No.52 of 2010 in E.A.No.64 of 2008 in O.S.No.99 of 2005 before the District Munsif Court, Mannargudi to amend the decree and the E.P. as per the title deed and to take possession of the property after measuring the same by the surveyor. From the perusal of the records, it is seen that the respondent herein has filed the suit in O.S.No.99 of 2005 for permanent injunction and the said suit was decreed after hearing both the parties. Thereafter, the respondent filed E.P.No.64 of 2008 under Order 21 Rule 37, 38 and 58 of CPC for disobedience of the decree passed by the Court. The petitioner has filed an undertaking affidavit in the aforesaid E.P that he would obey the decree passed in O.S.No.99 of 2005. Therefore, the court below has withdrawn the order of arrest. Thereafter, the petitioner was released inspite of the fact, they had not obeyed the order. Thereafter, the

petitioner has filed the suit in O.S.No.50 of 2010 suppressing the earlier suit filed by the respondent herein and obtained an order of interim injunction. It is brought to the notice of the Court that the interim order granted in O.S.No.50 of 2010 was not extended further. Subsequently, the petitioner filed the present application in E.A.No.243 of 2010 under Section 47 of CPC with the aforesaid prayer. The Court below has discussed the contention of the petitioner as well as the respondent and rejected the contentions of the petitioner stating that in the execution petition petitioner herein had given an undertaking to obey the decree and the present application had been filed without any bonafide reasons to entertain and hence, dismissed the said application. In view of the above said fact this court is of the view that the petitioner had approached this court suppressing the material facts and hence, he is not entitled to any relief before this court. The Honourable Supreme Court in S.P.Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (dead) by LRs. and others reported in [(1994)1SCC 1] in paragraph 6 has held as follows:

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's

loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

7. In view of the aforesaid decision of the Honourable Supreme Court, the petitioner is not entitled to get any relief in the present application. Therefore, this Court is of the view that no case is made out in the Civil

Revision Petition. Hence, in view of the facts and circumstances of the case and in the light of the decision stated supra, I am of the view that there is no error or illegality in the order passed by the learned District Munsif, Mannargudi warranting interference by this Court.

8. In the light of the above, this Civil Revision Petition fails and the same is dismissed. However, the petitioner is at liberty to work out his remedy in a manner known to law. No costs. Consequently, connected miscellaneous petition is also closed.

9. At this stage, it is brought to the notice of this Court by the learned counsel for the respondent that O.S.No.50 of 2010 has already been dismissed by the Court below on 09.02.2015. The said submission made by the learned counsel for the respondent is hereby recorded.

13.04.2017

Index : Yes / No
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To,

1. The District Munsif Court, Mannargudi.
2. The Public Prosecutor, High Court, Madras.

D.KRISHNAKUMAR, J.

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