

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.5018 of 2011
& M.P.No.1 of 2011

Annamalai

.. Petitioner

Vs.

1. Nandagopal
2. Meenakshi
3. Saravanan
(Respondents 2 & 3 are not
Necessary parties. Hence given
up in this C.R.P.)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.10.2011, made in R.E.P.No.3 of 2008 in O.S.No.364 of 1992 on the file of the District Munsif, Rasipuram.

For Petitioner : Mr.A.S.Prabu

For Respondents : Mr.P.Valliappan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 13.10.2011, made in R.E.P.No.3 of 2008 in

O.S.No.364 of 1992 on the file of the District Munsif Court, Rasipuram.

2. The petitioner is first defendant, first respondent is plaintiff, second and third respondents are defendants 2 and 3 in O.S.No.364/1992. The first respondent filed suit for permanent injunction restraining the petitioner and respondents 2 & 3 from interfering with his peaceful possession and enjoyment of the suit property. Petitioner filed the written statement on 03.12.1993 adopted by the 2nd respondent and are contesting the suit. The said suit was decreed on 11.02.1997. The first appeal, A.S.No.356/2002 filed by the petitioner and other defendants was also dismissed. The first respondent filed R.E.P.No.3 of 2008 against the petitioner and respondents 2 and 3 for arresting them and detaining in civil prison, as they have deliberately violated the injunction order granted by the District Munsif Court, Rasipuram and committed contempt.

3. The petitioner and respondents 2 & 3 filed counter and submitted that decree is not executable, as the same is barred by limitation and also stated that they have not committed any

contempt.

4. Before the learned Judge, parties let in evidence. The petitioner examined himself as RW1 and he has deposed that second appeal filed was filed by him and the respondents 2 & 3 is pending in this Court. In cross examination, the petitioner has stated that he will not permit the first respondent to enter into the suit property for maintenance, pending second appeal.

5. The learned Judge considering all the materials on record, evidence let in by the parties and evidence of the petitioner, allowed the E.P. in so far as it relates to the petitioner and dismissed the same against the respondents 2 and 3.

6. Against the order dated 13.10.2011, made in R.E.P.No.3 of 2008, the present civil revision petition has been filed by the petitioner.

7. Heard both the learned counsels for the petitioner and the respondents and perused the materials on record.

8. From the materials on record and order of the learned Judge, it is seen that the petitioner has admitted that he will not permit first respondent to enter into the suit property for maintenance, on the ground that the second appeal is pending. The petitioner has not produced any order of stay granted by this Court in the second appeal. Mere pendency of the second appeal will not automatically stay the decree passed by the trial Court. The petitioner has also not given the second appeal number. The learned Judge has granted ample opportunity to the petitioner to produce the copy of the stay order, if any, granted in the second appeal by this Court. The petitioner failed to produce any order.

9. The learned Judge, considering all the above facts, allowed the E.P for arresting the petitioner and to detain him in Civil prison, apart from imposing costs. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 13.10.2011.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2017

Index : Yes

gsa



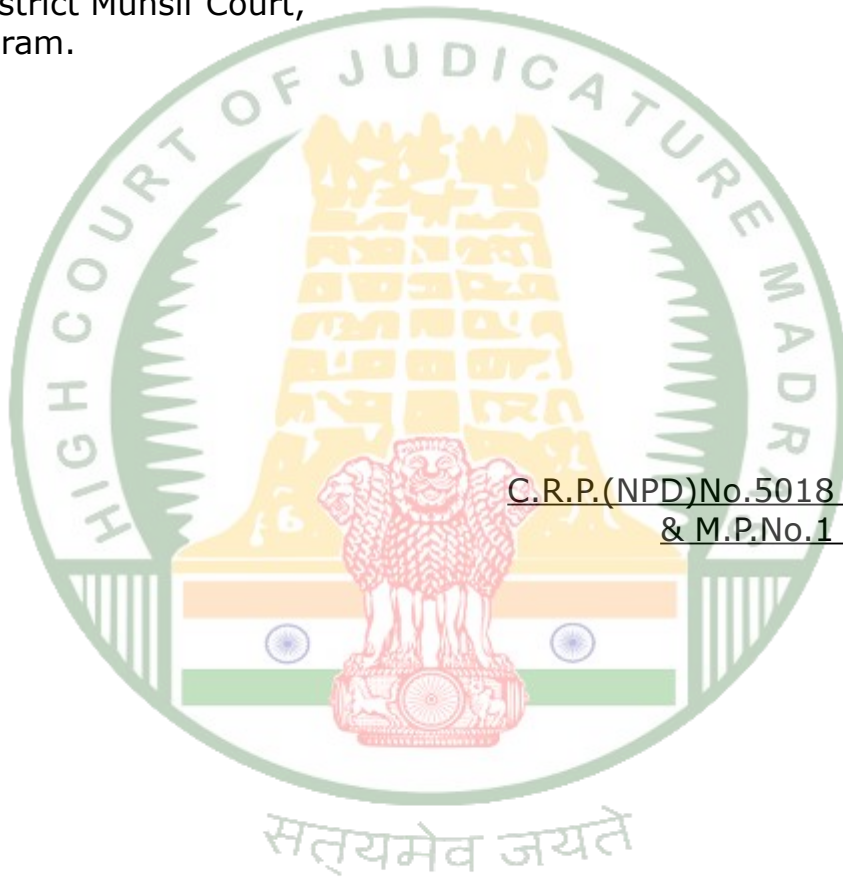
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V.M.VELUMANI, J.

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To

The District Munsif Court,
Rasipuram.



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