

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1789 of 2009

1.Vamanan
2.Gurunathan

... Petitioners

Vs.

1.Doss
2.Malliga
3.Arokiyasamy

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif at Alandur in I.A.No.2270 of 2005 in O.S.No.2077 of 1997 by order dated 09.08.2008.

For Petitioners : Mr.V.Kannan

For Respondents : No appearance for
R1 & R2
Mr.L.Dhamodharan
for R3

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the learned District Munsif at Alandur in I.A.No.2270 of 2005 in O.S.No.2077 of 1997 by order dated

09.08.2008.

2. The petitioners are plaintiffs and the respondents are defendants in O.S.No.2072 of 1997. The petitioners filed the suit for a decree against the respondents to quit and deliver the vacant possession of the 'B' schedule property and for a direction to the respondents to pay damages @ Rs.250/- per month for illegal use and occupation from 14.06.1995. The respondent did not appear before the Court and they were set exparte and exparte decree was passed on 30.11.2000. The petitioners filed I.A.No.2270 of 2005 under Order 39 Rule 2A read with Section 151 CPC. to punish the respondent for disobeying the decree by detaining them in civil prison and to order attachment of the properties of the respondents guilty of breach of the decree.

3. According to the petitioners, the decree is subsisting. The petitioners received notice from the respondents during the year 2004 stating that application to condone the delay in filing the application to set aside the exparte decree has been filed by them. The petitioner filed counter and application was adjourned to 05.08.2005 for enquiry. On 07.08.2005 at the instigation of R1 & R2, R3 demolished the suit property and started putting up construction. The respondent filed counter and submitted that

application under Order 39 Rule 2A CPC is not maintainable, after decree is passed in the suit. The remedy available to the petitioners is only by way of execution proceedings. They denied that the 3rd respondent demolished the suit property. The property, in the hands of the 3rd respondent is different from the suit property. The property sold by the respondents 1 and 2 is different from the suit property.

4. The learned Judge, considering the averments in the affidavit, counter affidavit, materials on record and the fact that the exparte decree was set aside and respondents have filed written statement, issues were framed and suit is posted for trial and decree of permanent injunction has been obtained in vague manner and they have not specifically stated whether the permanent injunction is in respect of the suit property or alienation of the suit property, dismissed the application.

5. Against the order dated 09.08.2008 passed in I.A.No.2270 of 2005 in O.S.No.2077 of 1997, the present Civil Revision Petition has been filed.

6. Heard the learned counsel for the petitioners as well as 3rd

respondent. Though notice has been served and the names of the respondents 1 and 2 printed in the cause list, there is no representation for them either in person or through counsel.

7. The petitioners have filed the suit for possession of 'B' schedule property and for damages. The suit was decreed exparte. The respondents filed application in IA No.2287 of 2003 to condone the delay of 1014 days in filing the application to set aside the exparte decree. The said application was dismissed on 18.09.2006. It is seen from the typed set of papers filed by the 3rd respondent that against the order of dismissal dated 18.09.2006, the respondents preferred revision in CRP NPD No.905 of 2007 and this Court, by order dated 30.04.2007 allowed the same condoning the delay in filing the application to set aside the exparte decree. Subsequently, the application to set aside the exparte decree was numbered as I.A.No.2043 of 2007 and the same was allowed by the Trial Court. The petitioners challenged the said order by filing CRP (PD) No.2010 of 2008 and this Court, by order dated 30.10.2008, dismissed the same confirming the order passed by the Trial Court. Subsequently, respondents filed written statement and issues were framed and suit is pending for trial. Meanwhile, petitioner have filed I.A.No.2270 of 2005 for punishing the respondents for committing

contempt of exparte decree. The learned Judge dismissed the application on the ground that the decree obtained by the petitioners is vague and it is not clear whether the permanent injunction granted by the court is with regard to possession or alienation of the suit property.

8. In view of the above facts and circumstances, I hold that the order passed by the learned Judge does not warrant any interference by this Court. The petitioner has not made out any case for contempt for punishing the 3rd respondent.

9. In the result, this Civil Revision Petition is dismissed. No costs.

24.07.2017

Index : Yes/No
rgr

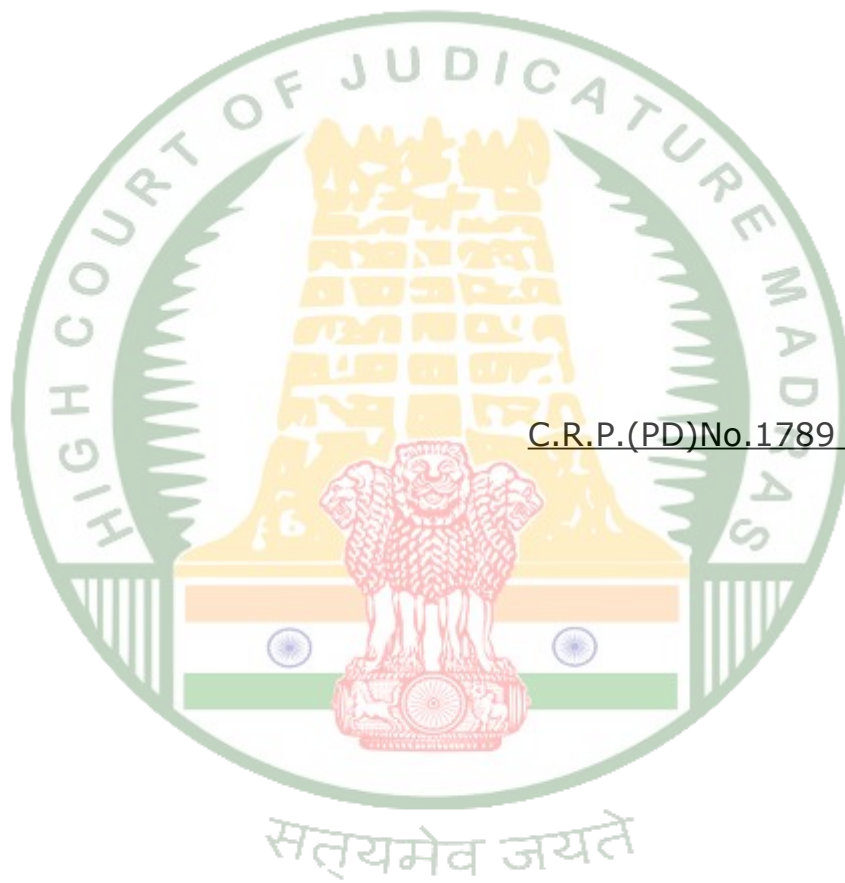
To

The District Munsif,
Alandur.

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V.M.VELUMANI, J.

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