

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.1336 of 2016
and
C.M.P.No.7487 of 2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.01.2017	01.02.2017

1.Shanmugam
S/o.Veerabhadran ..1st Respondent/1st Petitioner

Rajendran (Died)
S/o.Nataraja Thevar .. 2nd Respondent/2nd Petitioner

-Vs.-

1.Vedarathinam
S/o.Amirthalingam

2.Dhanabakkiam
W/o.Amirthalingam

3.Karthikeyan
S/o.Amirthalingam

4.Rajkumar
S/o.Amirthalingam ..Executing Petitioners/
Respondents 1 to 4

5.Arasumani
S/o.Chockalingam
Executive Officer
Vedaranyeswara Swami Devasthanam
Vedaranyam Taluk, Demu Illakka,
Nagapattinam District ..3rd Respondent/5th Respondent

Prayer:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the order and decree dated 29.01.2016 passed by the learned District Munsif cum Judicial Magistrate, Vedaranyam in E.P.No.7 of 2012 in O.S.No.363 of 1984.

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.G.Nagarajan

For Respondents : Mr.A.Muthukumar, for R1

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal dated 29.01.2016 made in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam, wherein the 1st petitioner and the 5th respondent herein were ordered to be arrested for contempt and disobedience of the order passed by the Court of law.

2.Heard, Mr.AR.L.Sunderasan, learned Senior Counsel appearing for the revision petitioner and Mr.A.Muthukumar, learned counsel appearing for the first respondent.

3.The learned Senior Counsel appearing for the revision petitioner would putforth his argument on the following grounds:

(a) The decree in O.S.No.363 of 1984 has been passed against the hereditary trustee of Arulmighu Vedaranyeswara Swami Devasthanam, who had already died. Thus, the decree itself is not executable, since it has been passed against a dead person.

(b) The respondents in E.P.No.7 of 2012 in O.S.No.363 of 1984 is not a party to the suit and hence, the judgment in personam. So, the said decree and judgment will not bind the respondents and the executing Court cannot issue an order of arrest.

(c) The plaintiff in O.S.No.363 of 1984 viz., Amirthalingam had already died. However, without filing an application under Section 146 CPC, the legal representatives of the said Amirthalingam had filed the execution petition in E.P.No.7 of 2012 which is illegal.

(d) The respondents 1 to 4, who are the legal heirs of the deceased Amirthalingam, the plaintiff in O.S.No.363 of 1984 had already filed an application in E.A.No.34 of 2012 seeking police protection. The said application came to be dismissed on 12.12.2012 and it was held therein that the respondents 1 to 4 were not in possession of the suit property. It is also pertinent to note that the said order of dismissal made in E.A.No.34 of 2012 has not been challenged. However, the said factum was not considered by the

executing Court while passing an order of arrest.

In view of the above grounds, the learned Senior Counsel appearing for the revision petitioner prayed for setting aside the order made in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file learned District Munsif cum Judicial Magistrate, Vedaranyam and for allowing this Civil Revision Petition.

4.To substantiate his contention, the learned Senior Counsel relied on the decision reported in *AIR 1955 Madras 2841 (Vol.42, C.N.79)(1) = 68 L.W. 107, Kodia Gounder and another v. Velandi Goundar and others* and submits that without filing an application under Section 146 CPC, the respondents 1 to 4 had filed the execution petition in E.P.No.7 of 2012 and hence, the same is not maintainable. He would also submit that the respondents 1 to 4 had to file a separate suit seeking injunction against the petitioner herein, who was in possession of the suit scheduled property from 20.09.1989. Thus, the learned Senior Counsel prayed for setting aside the impugned order.

5.Resisting the same, the learned counsel appearing for the first respondent would putforth his argument on the following grounds:

(a)There is no necessity to file an application under Section 146 CPC and the execution petition itself is maintainable. For the said proposition, the learned counsel relied upon the decision reported in

(i) **1995 Supp (3) Supreme Court Cases 69, Muthukaruppa Pillai and another v. Ganesan;**

(ii) **1998-3-L.W.795, Sulochana and 3 others v. K.Samy**

(b) The revision petitioner had disobeyed the order of injunction passed by the Trial Court and hence, the contempt proceedings has been initiated against the stranger to the order. For the said proposition, the learned counsel relied upon the decision reported in **1997-3-L.W.476, P.Kader Owilliah and others v. Maruthavadivu and another**, wherein it was held that it is a settled law that even a stranger to the order can be held guilty of the contempt and also can be proceeded against in the contempt of court proceedings. For the very same proposition, the learned counsel also relied on the following decisions:

(i) **AIR 1966 Mad 53 (DB), Nalla Senapathi Sarkarai v. Sri Ambal Mills (P) Ltd. And others.**

(ii) **AIR 1991 Madras 323 (Full Bench), Vidya Charan Shukla v. Tamil Nadu Olympic Association and another.**

(iii) **2003 (3) ALD 83, Sharfuddin (Died) by Lrs v. Mohd. Jamal and Others.**

(iv) **(2001) 6 Supreme Court Cases 534, Dhurandhar Prasad Singh v. Jai Prakash University and Others.**

In view of the above grounds, the learned counsel for the first respondent prayed for dismissal of the Civil Revision Petition.

6.Considered the rival submissions made by both sides and perused the typed set of papers.

7.The short facts of the case is that the first defendant in O.S.No.363 of 1984 viz., Hereditary trustee of Arulmighu Vedaranyeswara Swami Devasthanam has filed a suit against the second defendant therein viz., Fareedha Begum in O.S.No.41 of 1984 seeking for declaration of title and injunction in respect of the suit scheduled property. Since the said property is in possession and enjoyment of the Amirthalingam, he filed an application to implead himself as second defendant in O.S.No.41 of 1984 and the said application was also allowed, consequent upon which, Amirthalingam was arrayed as second defendant in O.S.No.41 of 1984. The said Amirthalingam also filed a suit in O.S.No.363 of 1984 against the plaintiff and first defendant in O.S.No.41 of 1984 viz., Hereditary Trustee of Arulmighu Vedaranyeswara Swami Devasthanam, Sri la Sri Kathirkama Pandara Sannithi and Fareedha Begum for permanent injunction in respect of the suit property stating that the suit properties belong to the first defendant and he had entered into a lease agreement with the first defendant on 14.09.1983 and from then on, he was in

possession and enjoyment of the property. The second defendant Fareedha Begum also attempted to get leasehold of the suit property and since she failed in her endeavor, she attempted to interfere with the peaceful possession and enjoyment of the plaintiff (Amirthalingam) and hence, he filed the suit. The suit in O.S.No.363 of 1984 was decreed *exparte* on 25.09.1987. When that being so, the legal representatives of the said Amirthalingam filed E.P.No.7 of 2012 in O.S.No.363 of 1984 against the revision petitioner and the 5th respondent herein for disobedience of the order passed in O.S.No.363 of 1984.

8. At this juncture, it would be appropriate to incorporate Section 146 CPC.

“146.Proceedings by or against representatives.-

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or by application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.”

9. It would also be appropriate to consider the decisions relied on by the learned counsel for the respondent.

9.1. In the decision reported in ***1995 Supp (3) Supreme Court Cases***

69, *Muthukaruppa Pillai and another v. Ganesan*, the predecessor-in-interest of the respondent filed the suit for injunction restraining the appellant from interfering with her rights as Hakdar and Pujari of two temples. The said suit was decreed and the respondent claiming to be the adopted son of the plaintiff filed an application for execution of decree which was also allowed by the Trial Court as well as the High Court. In appeal to the Hon'ble Apex Court, the appellant contended that the decree being personal to the plaintiff could not have been executed by the respondent who claimed to be the successor-in-interest of the plaintiff. However, the Hon'ble Apex Court rejected the contention of the appellant and upheld the order passed by the High Court. There is no dispute over the said proposition. But in the instant case, the question that arises for consideration is whether the execution petition can be filed without filing an application under Section 146 CPC. Hence, the above decision is not applicable to the facts of the present case.

9.2. In the decision reported in **1998-3-L.W.795, *Sulochana and 3 others v. K.Samy***, the legal representatives of the decree holder filed an execution petition contending that the respondent/judgment debtor had violated the decree for permanent injunction and consequently, prayed for assistance of the Court for the arrest and imprisonment of the respondent as provided under Order 21, Rule 32 CPC stating that they are the legal

representatives of the decree holder and hence, they are entitled to execute the decree without any separate application under Order 21 Rule 16 CPC. In the said decision, this Court held that the Execution Petition is maintainable. It would be appropriate to incorporate paragraphs 8 and 9 of the said decision:

“8. The judgment of the Supreme Court reported in Muthukaruppa Pillai v. Ganesan, 1995 Supp. (3) S.C.C. 69 conclusively establishes that an adopted son filing an application for executing the decree as filed under Section 146 and Order 21 Rule 16, C.P.C. was maintainable. The Court has held that the interest of the decree-holder was a heritable interest and hence the decree cannot be described to be personal in nature. The contention that a decree for injunction was personal in nature was rejected by the Supreme Court and it was held that there was nothing in the decree also to show that in the restriction expressly nor impliedly could be held that the decree would lapse on the death of the plaintiff.

9. Therefore, on any analysis of the decisions cited above, especially, the latest judgment of the Supreme Court reported in Muthukaruppa Pillai v. Ganesan, 1995 Supp. (3) S.C.C. 69, a person succeeding to a decree can seek to execute under Section 146 C.P.C. and that unless and otherwise the decree for

injunction was specifically restricted to the plaintiff, it is definitely executable by any individual succeeding to the interest of the decree holder.”

There is no quarrel over the ratio decidendi laid down in the above citation. So, the execution petition is maintainable without filing any application under Section 146 and Order 21 Rule 16 CPC.

10. Now this Court has to decide whether the order of arrest passed by the executing Court is maintainable?

Admittedly, the petitioner herein is neither the defendant nor the legal representative of the defendant in O.S.No.363 of 1984. There is also no iota of evidence to show that the revision petitioner is aware of the fact that the plaintiff in the said suit viz., Amirthalingam had obtained a decree in respect of the suit property. It is also pertinent to note that the suit property does not belong to the said Amirthalingam but it belongs to Arulmighu Vedaranyeswara Swami Devasthanam. In the plaint pleadings itself, it has been categorically stated by the said Amirthalingam that the temple is the owner of the property and he is only in possession, since he entered into a lease agreement with the temple authorities on 14.09.1983 and he had also spent some money in planting casuarina saplings. Amirthalingam had also further stated in the plaint that the first defendant/Hereditary Trustee of Arulmighu

Vedaranyeswara Swami Devasthanam, Sri la Sri Kathirkama Pandara Sannithi had filed a suit in O.S.No.41 of 1984 against the second defendant/Fareedha Begum for declaration of title and also for injunction, as though the first defendant was in possession and enjoyment. Further, though the suit filed by Amirthalingam in O.S.No.363 of 1984 was decreed exparte on 25.09.1987, the respondents 1 to 4 are not claiming title either under the Hereditary Trustee of Arulmighu Vedaranyeswara Swami Devasthanam or Fareedha Begum. It is also pertinent to note that the respondent 1 to 4 herein also filed an application in E.A.No.34 of 2012 seeking police protection. The executing Court after considering the documents filed by both the parties, dismissed the said application on 12.12.2012 and it was held therein that the respondents 1 to 4 have not proved that they were in possession of the suit property. Furthermore, on a perusal of the records, there is no document to show that after obtaining the decree in O.S.No.363 of 1984, neither the Amirthalingam (Plaintiff) nor his legal heirs were in possession and enjoyment of the suit property.

11.Per contra, the revision petitioner herein had entered into a lease agreement with the Executive Officer of Arulmighu Vedaranyeswara Swami Devasthanam on 20.09.1989 and in the year 1994, he was recorded as a cultivating tenant and he had also paid the lease amount regularly to the temple authorities. In such circumstances, I am of the view that there is no iota

of evidence to show that the revision petitioner herein is aware of the decree passed in O.S.No.363 of 1984.

12.At this juncture, it would be appropriate to consider the decision relied on by the learned Senior Counsel appearing for the petitioner reported in ***AIR 1955 Madras 2841 (Vol.42, C.N.79)(1) = 68 L.W. 107, Kodia Gounder and another v. Velandi Goundar and others***, wherein it was held that the principle that a decree for injunction cannot be extended so as to render those who are not *eo nomine* defendants liable for disobedience of the decree, is based on sound and equitable grounds. It would be appropriate to incorporate the relevant portion of the said decision:

“Whatever may be the view in England as regards the executability of such decrees solely founded on the observations of Buckley L. J. in '1914-2 KB 930 (F)', where, however, the question did not directly arise, but come to be incidentally, considered in judging the consequences of giving leave in a money suit against defendants in a representative capacity & the difficulties that would arise if the execution of such decrees against persons other than whom they sought to represent were to be ordered, the principle laid down in '12 Mad 365 (A)', has been consistently followed by our High Court in the later

decisions. This principles that a decree for injunction cannot be extended so as to render, those who are not eo nomine' defendants liable for disobedience of the decree is based on sound and equitable grounds. Before any person could be proceeded against personally for disobedience of a decree of court, it must be shown that he was bound personally by the decree and obliged to obey such a decree. To entitle the decree-holder therefore to proceed against such persons who are not parties on record the injunction must be revived against them, which must be by a separate suit and in such a suit an opportunity will be afforded to them to raise appropriate defences. Without a revival therefore of the decree for injunction against these other persons, no proceedings in pursuance of the decree could be started against them. If no execution of such a decree could be maintained against those persons who are not impleaded as defendants on the ground that they are not bound to obey the decree personally it is obvious that they cannot be held liable for any willful disobedience of such a decree. The result is that not only could there be no execution but there could be no application under Order 39, Rule 2, or under any other provision of law, for proceeding against

those persons for such disobedience. We are of opinion that the decrees for injunction in these cases are neither executable nor enforceable against the contesting respondents.”

At this juncture, the learned Senior Counsel appearing for the petitioner would submit that after amendment, this law is not a good law.

13. At this juncture, it would be appropriate to consider the decisions relied on by the learned counsel appearing for the respondent.

13.1. In the decision reported in **1997-3-L.W.476, P.Kader Owilliah and others v. Maruthavadivu and another**, it was held that it is a settled law that even a stranger to the order can be held guilty of the contempt and also can be proceeded against in the contempt of Court proceedings. But the above decision is not applicable to the facts of the present case because in the said decision, the order passed by this Court has been disobeyed by the officers of the Government discharging their official functions and so, in the contempt application they were impleaded in their personal capacity. When the same was challenged, it was held that as they are aware of the order passed by the Court and they had violated the order of the Court, they are to be proceeded against for disobedience of the order. There is no quarrel over the said proposition. But in the instant case, the petitioner has neither stepped into the shoes of the

defendants nor he is the legal representative of the judgment debtor. The decree was passed in the year 1987 and the execution petition was filed in the year 2012 and there is also no iota of evidence to show that the petitioner is aware of the decree passed in O.S.No.363 of 1984. In such circumstances, the above decision is not applicable to the facts of the present case.

13.2. In the decision reported in ***AIR 1966 Mad 53 (DB), Nalla Senapathi Sarkarai v. Sri Ambal Mills (P) Ltd. And others***, the petitioner who is the shareholder of the respondent Company, holding 2001 shares instituted a suit against the respondents 1 and 2 for permanent injunction, restraining them from convening or conducting an extraordinary general meeting which was to be held on 14.12.1964. Though an order of interim injunction was granted, a meeting was convened at 9.30 a.m on 14.12.1964 and hence, it was held that there is disobedience of the order and so, the contempt proceeding is said to be instituted under Sections 3 and 4 for Contempt of Courts Act. It was held therein that they are liable to be prosecuted for contempt of Court. It would be appropriate to incorporate the relevant portion of the said decision:

“It is not in dispute that a contempt of court might be committed even by a party who is not a party on record, in the order which is the subject of contempt. It is sufficient to refer here to Halsbury's Laws of England, 3rd Edn., Vol. 8, part I, Sec.

3, sub-section 39, (also see Oswald on Contempt 1910 Edn. page 106) which runs thus :

"A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and this contempt is punishable of committal or attachment."

There are several English cases cited in the books in support of this authority. Hence, as far as these other respondents are concerned, they are undoubtedly guilty of contempt, whether they were parties to the order or otherwise, so long as it was brought to their notice that the meeting was prohibited, and, nevertheless, they participated in it."

But the above citation is not applicable to the facts of the present case.

13.3. In the decision of the Hon'ble Full Bench of this Court reported in ***AIR 1991 Madras 323 (Full Bench), Vidya Charan Shukla v. Tamil Nadu Olympic Association and another***, the decision reported in ***AIR 1966 Mad 53 (DB), Nalla Senapathi Sarkarai v. Sri Ambal Mills (P) Ltd. And others*** has been relied upon. In the said decision, a suit has been filed in C.S.No.481 of 1990 and the learned Trial Judge had held the first defendant therein continues to be the President of the Indian Olympic Association and the resolutions, if any, purported to have been passed appointing the appellant as President of the

Indian Olympics Association would be of no legal consequence and would have no legal effect and the office premises of the Indian Olympic Association be restored by him to the first defendant in the suit.

But the above citation is not applicable to the facts of the present case.

13.4. In the decision reported in **2003 (3) ALD 83, Sharfuddin (Died) by Lrs v. Mohd. Jamal and Others**, it was held that the question that arises for consideration in the appeal is the binding nature of the temporary injunction Order granted by the lower Court on the LRs of the party, who suffered the Order as also the interpretation of Order 39 Rule 2(A) of CPC. It would be appropriate to incorporate the relevant portion in paragraphs 22 and 23 of the said decision:

“22. As can be seen from the aforesaid decisions, injunction is a remedy 'in personam' and not in rem. But at the same time, it is also cannot be disputed that a person who aids and abets and violates the order of the Court is also liable for contempt of the Court.

23. The prime question is whether the persons who are not parties to the proceedings when the Order was passed can be made liable for the violation of the Orders of the Court. It is beyond the pale of controversy that the Order binds the parties

till such time they are in subsistence and they are liable for consequences for violation of the Orders. It is also basic principle that the person who is not a party to the proceedings cannot be proceeded with against them for the violation of the Order, but yet the third party cannot be said to absolve himself of this situation in certain circumstances.”

In the instant case, the petitioner is neither the legal representative of the judgment debtor nor he had stepped into the shoes of the judgment debtor. Further, there is no iota of evidence to show that the revision petitioner is aware that an order of injunction is in force. In such circumstances, the above citation is not applicable to the facts of the present case.

13.5. The next decision relied on by the learned counsel for the respondent is reported in **(2001) 6 Supreme Court Cases 534, Dhurandhar Prasad Singh v. Jai Prakash University and Others**. It would be appropriate to incorporate paragraph 24 of the said decision:

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the

ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing. In the case on hand, the decree was passed against the governing body of the College which was defendant without seeking leave of the Court to continue the suit against the University upon whom the interest of the original defendant devolved and impleading it . Such an omission would not make the decree void ab initio so as to invoke application of Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that original defendant absented himself from the proceeding of the suit after appearance as it had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.”

But the above decision is not related with the contempt proceedings and hence, the same is not applicable to the facts of the present case.

14.Further, at the risk of repetition, it is pertinent to note that the

revision petitioner had entered into a rental agreement with the temple authorities on 20.09.1989 and he has been recorded as cultivating tenant in the year 1994. Further, the petitioner had been regularly paying the lease amount to the temple authorities and there is also no iota of evidence to show that the revision petitioner is aware of the decree passed in O.S.No.363 of 1984.

15.On perusal of the entire papers, it is evident that the respondents 1 to 4 who are the legal representatives of the plaintiff in O.S.No.363 of 1984 were not in possession of the suit property and they attempt to enter into possession by way of illegal means, by filing E.P for arrest, as if the revision petitioner and the 5th respondent knowing fully well about the order of injunction had willfully interfered with their possession.

16.It is also not in dispute that the properties originally belong to the Arulmighu Vedaranyeswara Swami Devasthanam, Vedaranyam and there is also documentary evidence to show that the revision petitioner had paid the lease amount to the temple authorities even in the year 2012. But the respondents 1 to 4 had filed the application as though they were in possession of the suit property and the revision petitioner in connivance with the 5th respondent had forged the documents and attempted to interfere with their possession, thereby disobeying the order made in O.S.No.363 of 1984. Even at the time of

dismissing the application in E.A.No.34 of 2012 seeking police protection, the executing Court had rightly held that the respondents 1 to 4 have not proved that they were in possession, however, it had failed to appreciate the said factum while disposing the application in E.P.No.7 of 2012 for ordering arrest. In such circumstances, I am of the view that the order of arrest passed by the executing Court is illegal and hence, the same is hereby set aside.

17.At this juncture, the learned counsel for the respondent would submit that even though arrest has been ordered against two persons, viz., the revision petitioner and the 5th respondent/Executing Officer of Arulmighu Vedaranyeswara Swami Devasthanam, the 5th respondent has not filed any revision. Merely because one of the party to the proceedings had not filed any revision, the same will not take away the rights of the other party to challenge the order of arrest. So, the argument advanced by the learned counsel for the revision petitioner does not hold good.

18.In view of the above stated facts and circumstances, I am of the view that the order of arrest passed in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam is illegal and the same is hereby set aside.

19. In fine, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

01.02.2017

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Index: Yes/No

R.MALA, J.

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Pre-Delivery order made in
C.R.P.(NPD),No.1336 of 2016

Dated : 01.02.2017

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