IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3603 of 2016
& C.M.P.No.18340 of 2016

Orders reserved on	Orders pronounced on
14.06.2017	07.07.2017

N.Vimala .. Petitioner

Vs.

1.Boologammal @ Ammaayi Ammal

2.Leelaraman

3.Arakonam Municipality
rep. by its Commissioner
Arakkonam. .. Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and judment dated

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01.09.2016 in C.M.A.No.5 of 2014 on the file of the learned Subordinate Judge, Ranipet, Vellore District, confirming the fair and decretal order dated 25.07.2014 in I.A.No.362 of 2012 in O.S.No.155 of 2012 on the file of the District Munsif Court, Arakkonam, Vellore District.

For Petitioner : Mr.P.Srinivasan

For R1 and R2 : Mr.S.Mohamed Shabeen

R3 : Service awaited

ORDER

This Civil Revision Petition has been filed against the decree and judment dated 01.09.2016 in C.M.A.No.5 of 2014 on the file of the learned Subordinate Judge, Ranipet, Vellore District, confirming the fair and decretal order dated 25.07.2014 in I.A.No.362 of 2012 in O.S.No.155 of 2012 on the file of the District Munsif Court, Arakkonam, Vellore District.

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2. The petitioner is a third party, respondents 1 and 2 are the plaintiffs, third respondent is the defendant in O.S.No.155 of 2012

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on the file of the District Munsif Court, Arakkkonam. The petitioner is working as Commissioner, Maraimalai Nagar Municipality and she is impleaded as thirty party to the suit. Respondents 1 and 2 filed the suit to declare that the respondents 1 and 2 have absolute right and title over the plaint B schedule property and for permanent injunction. The third respondent filed written statement and is contesting the suit. The respondents 1 and 2 filed I.A.No.356 of 2012 for temporary injunction restraining the third respondent and its officers from interfering with the respondents 1 and 2's peaceful possession and enjoyment of the plaint B schedule property.

3. The learned District Munsif, Arakkonam, granted interim injunction on 26.11.2012 and the said order was served on the third respondent at 1.05 p.m. on 27.11.2012 by Court process server. According to the respondents 1 and 2, after receipt of the order passed by the learned Judge at 1.05 p.m., the officials of the third respondent demolished the building at 5.00 p.m. and laid cement road. The petitioner was the Commissioner of the third respondent Municipality at that time and as per her instructions, the officials of the third respondent municipality demolished the building violating

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the interim injunction granted by the Court.

4. In view of the same, the respondents 1 and 2 filed I.A.No.361 of 2012 for a direction to the third respondent municipality to restore the original construction of the plaint B schedule mentioned house and land. Respondents 1 and 2 also filed I.A.No.362 of 2012 to attach the schedule of property of third respondent and detain the Commissioner of the Municipality in civil prison. The petitioner was the Commissioner in-charge at the time of demolition.

5. The petitioner filed counter affidavit and submitted that the building was demolished on 27.11.2012 at 11.00 a.m. itself, before the order of injunction was served on the third respondent.

6. Before the learned District Munsif, Arakkonam, the first respondent was examined as P.W.1 and Court process server was examined as P.W.2 and the respondents 1 and 2 marked 43 documents as Exs.P1 to P43. On behalf of the third respondent, one Jayapaul, Assistant Municipality Engineer was examined as R.W.1

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and marked 5 documents as Exs.R1 to R5. Advocate Commissioner was examined as C.W.1 and three documents were marked as Exs.C1 to C3.

7. The learned District Munsif, Arakkonam, considering the averments made in the affidavit, counter affidavit and evidence of P.W.2 held that the petitioner violated the order of interim injunction granted by the Court and allowed both the applications filed by the respondents 1 and 2.

8. Against the said order dated 25.07.2014, the petitioner filed C.M.As. and the same were transferred to the learned Sub-Judge, Ranipet and renumbered as C.M.A.Nos.5 and 6 of 2014.

9. Before the learned Sub-Judge, Ranipet, both the counsel for the petitioner and respondents argued the appeals elaborately on merits of the suit. The learned Sub-Judge, Ranipet, considering the arguments of counsel for the parties, order of the learned District Munsif, Arakkonam and materials available on record, dismissed both the appeals. The learned Sub-Judge, Ranipet, accepted the evidence of P.W.2 and rejected the evidence of R.W.1.

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10. Against the said order of dismissal dated 01.09.2016 made in C.M.A.No.5 of 2014, the present revision petition is filed by the petitioner.

11. Heard both sides and perused the materials available on record.

12. The point for consideration in the civil revision petition is whether the petitioner has instructed her officials to demolish the B schedule property, after receipt of order of interim injunction granted by the learned District Munsif, Arakkonam and whether B schedule property was demolished before receipt of order of interim injunction.

13. The respondents 1 and 2 have stated that copy of the order was served through Court process server at 1.05 p.m. on 27.11.2012 and as per the instruction of petitioner, the B schedule property was demolished at 5.00 p.m.

14. On the other hand, it is the case of the petitioner and

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third respondent that there is no B schedule property as described in the plaint and they have demolished the portion encroached by the respondents 1 and 2 on the municipality road in the morning at 11.00 a.m. on 27.11.2012, before receipt of copy of the interim order of injunction. The first respondent was examined as P.W.1 and marked 43 documents as Exs.P1 to P43. Except the documents under Exs.P31 to P43, which are C.Ds., photographs and copy of the interim order, other exhibits marked by the respondents 1 and 2 are not relevant to decide the issue in I.A.No.362 of 2012. The respondents 1 and 2 had not examined the person, who has taken photographs and prepared C.Ds. The only evidence relevant to decide the issue is the evidence of P.W.2. He is the Court process server, who served the order of interim injunction granted by the learned District Munsif, Arakkonam. According to him, he served the order of interim injunction and other documents relating to the suit and I.As. at 1.05 p.m. on 27.11.2012. This portion of the evidence is not in dispute.

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15. According to P.W.2/Court process server, he went to the suit property at about 4.00 or 4.30 p.m. on 27.11.2012, at request

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of the advocate of the respondents 1 and 2. He has no authority to visit the suit property without any specific direction from the learned District Munsif. He has not stated that at the time of his visit, the officials were demolishing the building. According to him, after seeing the order of interim injunction under Ex.A42 granted by the learned District Munsif, Court notice/Ex.A41 and summons Ex.P43, the officials of the third respondent informed him that they would not demolish the building.

16. A reading of the evidence extracted by the learned Sub Judge, Ranipet, clearly shows that P.W.2 is an interested witness and he has no authority to inspect the suit property without any direction from the learned District Munsif, Arakkonam. Both the Courts below failed to consider this aspect. Both the Courts below have elaborately considered the arguments on merits of the suit rather than on short point as to whether the petitioner has violated the order of learned District Munsif, Arakkonam. The Courts below have not considered the contention of the petitioner and third respondent that the building was demolished at 11.00 a.m. on 27.11.2012 and not at 5.00 p.m. as claimed by the respondents 1

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and 2. The Courts below also failed to see that the respondents 1 and 2 have not examined the person, who has taken photographs. He is the competent person to speak about the time and demolition, as he has taken photographs and videographs.

17. It is pertinent to note that an Advocate Commissioner was appointed in I.A.No.357 of 2012 and he inspected the suit property. Learned counsel for the respondents 1 and 2 ought to have brought to the notice of the learned Judge about the demolition of B schedule property by the petitioner and officials of the third respondent after receipt of copy of the interim injunction. From the materials available on record, it is seen that instead of approaching the learned District Munsif, Arakkonam, the learned counsel for the respondents 1 and 2 has approached the Court process server and his evidence is unbelievable.

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18. Considering all the above facts, I hold that both the Courts below have committed an irregularity and illegality in accepting the evidence of P.W.2, which is not corroborated by any independent evidence especially the person, who took photographs

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and videographs. P.W.2 without orders of the learned District Munsif claims to have visited the suit property at 4.00 or 4.30 p.m. In view of the above fact, evidence of P.W.2 is not acceptable.

19. In view of the above reason, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 25.07.2012 made in I.A.No.362 of 2012 and decree and judgment dated 01.09.2016 made in C.M.A.No.5 of 2014.

20. As the suit is of the year 2012, the learned District Munsif, Arakkonam, is directed to dispose the suit as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

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To

1.The District Munsif Court, Arakkonam.
2.The Sub-Court, Ranipet.

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V.M.VELUMANI, J.

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Pre-delivery order made in

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