



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (MD) No. 2429 of 2016 (PD)
& C.M.P. (MD) No. 11441 of 2016**

Anthonymsamy, S/o.Seenivasaga Nadar

.. Petitioner

Vs.

Ilayaperumal @ Vellapandi Nadar (Died)

1.Madasamy,

S/o.Late.Ilayaperumal @ Vellapandi Nadar

2.Samuthiram,

S/o.Late.Ilayaperumal @ Vellapandi Nadar

3.Ulaganathan,

S/o.Late.Ilayaperumal @ Vellapandi Nadar

4.Muruganantham,

S/o.Late.Ilayaperumal @ Vellapandi Nadar

5.Kalyani, W/o.Lakshmanan

6.Amirthakani Ammal,

W/o. Late.Mookkaiah Nadar

7.Pal Sudhakar, S/o.Rajamani Nadar

8.Jeyaraj, S/o.Ponnaiah Nadar

Koil Pitchai Nadar (Died)

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the executable and fair order, dated 01.06.2016, made in E.P.No.142 of 1990 in O.S.No.1052 of 1987, on the file of the Principal District Munsif Court, Ambasamudram.

For Petitioner : Mr.C.Dhanaseelan

For R1 to R6 : Mr.D.Nallathambi

ORDER

This Civil Revision Petition has been filed against the executable and fair order, dated 01.06.2016, made in E.P.No.142 of 1990 in O.S.No.1052 of 1987, on the file of the Principal District Munsif Court, Ambasamudram.

2. The petitioner is the first defendant in the suit in O.S.No.1052 of 1987 and first respondent in E.P.No.142 of 1990 on the file of the Principal District Munsif Court, Ambasamudram.

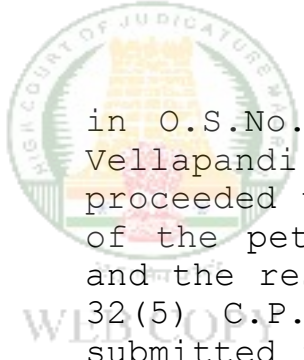


The father of the respondents 1 to 6 viz., Ilayaperumal @ Vellapandi Nadar is the plaintiff/decreed-holder and the respondents 7 and 8 are the defendants 2 and 3. The plaintiff/father of the respondents 1 to 6 viz., Ilayaperumal @ Vellapandi Nadar [since deceased] filed O.S.No.1052 of 1987 against the petitioner [first defendant] and the respondents 7 and 8 [defendants 2 and 3] and one Koil Pitchai Nadar (since deceased) [fourth defendant] for declaration to declare that the suit pathway as common pathway to both the plaintiff - Ilayaperumal @ Vellapandi Nadar and the petitioner/first defendant and also for mandatory injunction to remove the encroachment made by the petitioner and the respondents 7 and 8 and the said Koil Pitchai Nadar. An ex-parte decree was passed in the said suit on 26.04.1988. The petitioner filed I.A.No.1221 of 1988 to set aside the ex-parte decree. The said application was ordered on payment of costs. The petitioner failed to pay the cost. Therefore, the said application was dismissed on 03.08.1989. The father of respondents 1 to 6/plaintiff filed E.P.No.142 of 1990, to execute the decree passed in O.S.No.1052 of 1987. Pending E.P., the father of the respondents 1 to 6/plaintiff died. The respondents 1 to 6 were impleaded as petitioners 2 to 7 in the E.P., vide order dated 06.02.2015, made in E.A.No.27 of 2015. The petitioner and the respondents 7 and 8 and Koil Pitchai Nadar/fourth defendant contended that the decree, dated 26.04.1988, passed in O.S.No.1052 of 1987 is not executable, in view of the decree, dated 29.06.1988, passed in O.S.No.225 of 1982, which was filed by the petitioner against the father of the respondents 1 to 6.

3. The learned Principal District Munsif, Ambasamudram, considering the averments mentioned in the affidavit and the counter affidavit and considering the materials available on record and also considering the judgment and decree, dated 26.04.1988, passed in O.S.No.1052 of 1987, held that the Execution Court cannot go beyond the decree and ordered arrest considering the fact that the E.P. filed in the year 1990 to execute the decree, dated 26.04.1988.

4. Against the said order of arrest, dated 01.06.2016, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the petitioner filed O.S.No.225 of 1982, which is earlier to the filing of O.S.No.1052 of 1987 filed by Ilayaperumal @ Vellapandi Nadar, the father of the respondents 1 to 6. In the said suit [O.S.No.225 of 1982], the ex-parte decree, dated 26.04.1988, passed in O.S.No.1052 of 1987 was marked as Ex.B.8. After considering all the materials, the suit in O.S.No.225 of 1982 filed by the petitioner was decreed. He further submitted that Ilayaperumal @ Vellapandi Nadar, father of the respondents 1 to 6, in the proceedings before this Court, admitted that the suit property in O.S.No.225 of 1982 and the suit property



in O.S.No.1052 of 1987 are different. The said Ilayaperumal @ Vellapandi Nadar and subsequently, the respondents 1 to 6 proceeded with the E.P. only to harass the petitioner. By arrest of the petitioner, the alleged encroachment would not be removed and the respondents would have filed petition under Order XXI Rule 32(5) C.P.C. in stead of Order XXI Rule 32(1) C.P.C. He also submitted that the respondents 2 to 6 have taken steps for arrest only against the petitioner alone. The respondents 1 to 6 tried to interfere with the possession of the property of the petitioner and have created law and order problem and therefore, he prayed for allowing the Civil Revision Petition.

6. In support of his submissions, the learned counsel for the petitioner relied on paragraphs 22 to 24 and 28 of the order passed by this Court, dated 07.02.2011, in C.R.P.NPD.No.570 of 2004 and submitted that the petitioner has not committed any willful disobedience.

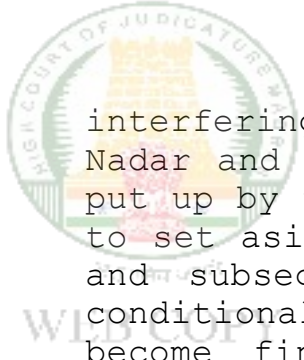
7. The learned counsel for the respondents 1 to 6/caveator submitted that the E.P. filed against all the defendants and the fourth defendant died and the respondents 7 and 8 remained ex-parte and they are not residing in the suit property and also not obstructing the pathway. The contention of the petitioner that in view of the judgment and decree, passed in O.S.No.225 of 1982, the decree dated 26.04.1988, passed in O.S.No.1052 of 1987, cannot be executed is not correct. He further submitted that the property in both the suits are different and the respondents 1 to 6 are not seeking removal of any construction from the suit property in O.S.No.225 of 1982. When the respondents 1 to 6 tried to remove the obstruction made by the petitioner, the petitioner and others prevented the respondents 1 to 6 by force. He also submitted that the learned Principal District Munsif has considered all the facts and ordered arrest, giving cogent and valid reason.

8. In support of his submissions, the learned counsel for the respondents 1 to 6 relied on the following judgments:

- (i) AIR 1953 SC 65 [Mohanlal Goenka Vs. Benoy Kishna Mukherjee and others]
- (ii) 1987 (4) SCC 585 [Kamlabai and others Vs. Mangilal Dulichand Mantri]

9. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

10. The father of the respondents 1 to 6 filed the suit in O.S.No.1052 of 1987 and obtained the decree, dated 26.04.1988. As per the decree passed in the said suit, the suit property is a portion of the property of the petitioner and in O.S.No.1052 of 1987, the said Ilayaperumal @ Vellapandi Nadar/father of the respondents 1 to 6 also sought for injunction restraining the petitioner from



interfering with the right of the said Ilayaperumal @ Vellapandi Nadar and also for mandatory injunction to remove the obstruction put up by the petitioner. The application filed by the petitioner to set aside the ex-parte decree, was allowed on payment of costs and subsequently, it was dismissed for non-compliance of the conditional order. In the circumstances, the said decree has become final. The said Ilayaperumal @ Vellapandi Nadar and subsequently, the respondents 1 to 6 have stated that the petitioner is preventing them from using the pathway and not removing the obstruction put up by the petitioner. It is admitted by Ilayaperumal @ Vellapandi Nadar and the respondents 1 to 6 that the suit property in O.S.No.1052 of 1987 and the suit property in O.S.No.225 of 1982 are different. In the circumstances, it is clear that the petitioner has disobeyed the decree passed in O.S.No.1052 of 1987. It is open to the decree-holder to file a petition under Order XXI Rule 32(1) or 32(5) C.P.C. The petitioner cannot dictate terms to the decree-holder and nature of E.P. to be filed by him. The learned Principal District Munsif has rightly ordered arrest by giving cogent and valid reason. In the circumstances, there is no irregularity or illegality in the order dated 01.06.2016, passed in E.P.No.142 of 1990 in O.S.No.1052 of 1987, warranting interference by this Court.

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

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Ambasamudram.

+1 CC to M/s.D.NALLATHAMBI, Advocate, SR No. 4452

SMN2

PSM/SV-MMS/10.02.2017/4P/3C

C.R.P.(MD)No.2429 of 2016 (PD)
& C.M.P.(MD)No.11441 of 2016
25.01.2017