

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**C.R.P.(NPD)No.225 of 2013 and
C.M.P.No.4775 of 2019

Ponusamy,
S/o.Venkatachala Gounder,
Kombakattupudur,
Itchipatti Village,
Palladam.

.. Petitioner

Vs.

1.Chinnasamy,
S/o.Raman,
No.7-X, Jakkarpalayam,
Sirukkalanthai Village,
Pollachi Taluk.

2.Subbammal,
W/o.Raman,
No.4/84, Karaivazhimathappur Village,
Palladam Taluk.

3.Selvaraj,
S/o.Subban,
No.1/61, Thottipalayam,
Karaivazhimathappur Village,
Palladam Taluk.

4.Vasanthamani,
W/o.Nagaraj,
No.1/61, Thottipalayam,
Karaivazhimathappur Village,
Palladam Taluk.

5.Palaniammal,
W/o.Venkittan,
No.1/61, Thottipalayam,
Karaivazhimathappur Village,

Palladam Taluk.
 6.Rangan,
 S/o.Rangan,
 No.1/152, Harijana Street,
 Itchipatti Village,
 Palladam Taluk.

7. Mani
 S/o.Rangan,
 No.1/152, Harijana Street,
 Itchipatti Village,
 Palladam Taluk.

8.Rayammal,
 W/o.Palaniasamy,
 No.1/152, Harijana Street,
 Itchipatti Village,
 Palladam Taluk.

... Respondents

Civil Revision Petition filed under Section 115 of CPC against the order dated 11.04.2012 in E.P.No.6 of 2011 in O.S.No.137 of 2008 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.S.Gunalan

ORDER

The above Civil Revision Petition has been filed by the petitioner against the order dated 11.04.2012 passed in E.P.No.6 of 2011 in O.S.No.137 of 2008 by the District Munsif, Palladam.

2.The petitioner is the plaintiff and the respondents are the defendants in the suit.

3.As against the order passed by the Executing Court,

refusing to order for arrest of the respondents for violation of the

decree and judgment passed in favour of the petitioner, the present revision petition is filed.

4. In O.S.No.137 of 2008, permanent injunction has been granted in favour of the revision petitioner, restraining the defendants, their men, agents, servants, relatives and anybody claiming under them from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property. In pursuant to the said decree, the revision petitioner has taken out an Execution Petition in E.P.No.6 of 2011 alleging that the defendants are disobeying the decree and judgment of the Trial Court and trying to interfere with his peaceful possession and also threatening him to foist a false criminal case under the Special Act.

4. Before the Trial Court, PW1 and PW2 were examined and Exs.P1 to P5 were marked on the side of the petitioner. No witness was examined nor any document was marked on the side of the respondents.

5. After taking into consideration the evidence adduced by the respective parties, the Trial Court, came to the conclusion that based on the judgment and decree (Exs.P1 and P2), the revision petitioner has made out a *prima facie* case that the respondents are disturbing

his peaceful possession and enjoyment of the suit property, in violation of the decree passed in the suit. However, the trial Court refused to order for arrest of the respondent on the ground that "By detention of judgment debtor in civil prison for violation of the decree, the decree holder would not get anything", thereby, liberty was granted to the revision petitioner/plaintiff to approach the concerned police officials for penal actions.

6. Heard the learned counsel for the revision petitioner. The respondents called absent, despite their names being printed in the cause list.

6. Admittedly, in the suit, judgment and decree have been passed in favour of the revision petitioner/plaintiff and permanent injunction has been granted in favour of the revision petitioner restraining the defendants, their men, agents, servants, relatives and anybody claiming under them from in any way interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. When the decree holder initiated execution proceedings against the judgment debtor for his willful disobedience of decree and judgment, he has to take recourse under Order 21 Rule 32 of CPC, which deals with the decree of specific performance. The above provision makes it very clear that if anybody violates the Court decree

in willful manner, the decree holder can take out a execution petition, seeking for detention of such person in civil prison.

8. Such being the position, the executing Court having found that the respondents are trying to disobey the decree and judgment, declined to order for arrest of the respondents/judgment debtors, which, in my view is not correct. The executing Court ought not to have directed the revision petitioner to approach the concerned police officials. It is for the Court to ensure that its order is properly executed and respected. Therefore, the finding of the Executing Court that by mere arrest of the judgment debtor, the decree holder will not be benefited, has no logical reason. To prevent such disobedience, the decree holder can very well seek for detention of the violators in civil prison.

In such view of the matter, the order of the Trial Court, declining to order arrest of the violators of the judgment and decree, is hereby set aside. The Executing Court is also directed to issue show cause notice to the respondents as to why they should not be detained in civil prison for violation of judgment and decree passed in the suit.

N.SATHISH KUMAR,J.,

nsd

With these observations, the civil revision petition is allowed and connected civil miscellaneous petition is also ordered accordingly. No costs.

29.04.2019

Index: Yes / No
Speaking/Non-speaking order
nsd

To

The District Munsif,
Palladam.



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