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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2018

Pronounced on : 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD) No.1541 of 2018 and

C.M.P.No.8229 of 2018

V.K.Muthusamy

... Petitioner/Decree holder

Vs.

1. Ponnusamy @Karuppana Goundar

2. Saraswathi

3. Natesan

4. Mathiyalagan

5. Muthusamy

6. Periyapaiyan

7. Chinnapaiyan

8. Karuppannagounder

9. Gokulsankar

10. Jaya

... Respondents

Civil Revision Petition has been filed under Article 227 of Constitution of India against the fair and decreetal order dated 25.01.2018 made in R.E.P.No.26 of 2010 in O.S.No.220 of 1998 on the file of the District Munsif Court, Paramathi, Namakkal District.

For petitioner : Mr.V.Ragavachari for
Mr.R.Prabakar

For Respondents: R3, R4 & R8 - Given up
R1,R2, R5 to R7, R9 & R10 -
Notice served - No Appearance

O R D E R

This civil revision petition has been filed against the order dated 25.01.2018 made in R.E.P.No.26 of 2010 in O.S.No.220 of 1998 on the file of the District Munsif Court, Paramathi, Namakkal District.

2. According to petitioner, he filed a suit in O.S.No.220 of 1998 on the file of the the District Munsif Court - Judicial Magistrate, Paramathi, for the reliefs of declaration of easementary right over Cart Track and for permanent injunction against the respondents 1 to 8 herein and others. The said suit was decreed in favour of the petitioner by judgment and decree dated 20.11.2000. The respondents 9 & 10, who are subsequent purchasers of portion of land, where the said cart track runs, had willfully disobeyed the order of the Court by causing



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hardships to the petitioner in reaching his land through the said Cart Track and destroyed the same by JCB. Therefore, the petitioner filed a petition in R.E.P.No.26 of 2010, seeking to punish the respondents 9 & 10 and to restore the cart track. The Execution Court, after hearing both the parties, by order dated 25.01.2018 had dismissed the same on the ground that the decree obtained by the petitioner will not bind the respondents 9 & 10, since they are subsequent purchasers from the defendants 2, 11 & 12 in the suit, who were already exonerated from the suit proceedings.

3. Against the order dated 25.01.2018, the petitioner has now come forward with the present civil revision petition.

4. The learned counsel for the petitioner would submit that the petitioner filed a suit and obtained a decree in his favour with regard to suit cart track. The respondents 9 & 10, who are subsequent purchasers of portion of land, where the said Cart Track runs, even though having full knowledge of the order of the Court, had willfully disobeyed the order by causing hardships to the petitioner in reaching his land through the said Cart Track and destroyed the Cart Track and therefore they should be punished. Since the respondents 9 & 10 were subsequent purchasers of the land, after the decree passed in favour of the petitioner, they are also bound to obey the decree. In support of his contentions, the learned counsel for the petitioner has relied on the decisions rendered by this Court reported in MANU/TN/0297/1976 (Ondipudur Weavers Co-Operative Production and Sales Society Ltd., rep. By its Special Officer and others Vs. Velumani and others) and the decision rendered by the Hon'ble Apex Court reported in 1986 (Supp) Supreme Court Cases 682 (Ram Laxhan Singh Vs. Dy. Director of Consolidation and Others).

5. The learned counsel further submitted that even though the petitioner had produced sufficient documents to show that the respondents 9 & 10 had destroyed the Cart Track, the Executing Court failed to consider the same and dismissed the execution petition, by giving an erroneous finding that the decree will not bind the respondents 9 & 10, which warrants serious interference.

6. Despite notice been served on the respondents 1, 2, 5 to 7, 9 & R10, none appeared on behalf of them. Heard the learned counsel for the petitioner and perused the materials available on record.



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7. On a perusal of the records, it reveal that the petitioner filed a suit and obtained decree in his favour. Pending the suit, the defendants 2, 11 & 12 had sold some portion of the lands to two persons namely Chellappa Gounder and Gurusamy, who were not party to the suit. Thereafter defendants 2, 11 & 12 in the original suit were given up and there was no decree against them. The respondents 9 & 10 were purchased the land from the said Chellappa Gounder and Gurusamy, after the decree came to be passed in favour of the petitioner. The respondents 9 & 10 had no knowledge about the decree passed in favour of the petitioner and there is no proof for the same. The petitioner in his cross examination had admitted that the respondents 9 & 10 were not party to the suit and the two persons, who purchased the land from the defendants 2, 11 & 12 (given up), were not added as party to the suit. The petitioner did not communicate the decree to the said two persons, which will clearly shows that the respondents 9 & 10, who purchased the land from the said persons, definitely had no knowledge about the decree passed in favour of the petitioner. Under these circumstances, the contention of the learned counsel for the petitioner that since the respondents 9 & 10 are subsequent purchasers of the land, where the cart track runs, they are bound to obey the decree, is not acceptable one and they should not be punished, unless their knowledge about the decree passed in favour of the petitioner with regard to the cart track, is established. The authorities cited by the learned counsel for the petitioner are not applicable to the facts and circumstances of the present case on hand.

8. I have carefully perused the order of the Executing Court and the materials available on record. It is well settled proposition that to file a petition seeking to punish someone on the ground of violation of order of the Court, one should prove the fact that he had willfully disobeyed the order of the Court with knowledge and intention. This Court is of the view that the petitioner failed to establish the facts that the respondents 9 & 10 had knowledge about the decree passed in favour of the petitioner and they had willfully disobeyed the order of the Court by destroying the cart track. Hence, this Court does not find any reason to interfere with the order dated 25.01.2018 passed by the Executing Court.

9. In the result, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar



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To

The District Munsif Court, Paramathi,
Namakkal District.

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+lcc to Mr. V.Ragavachari, Advocate SR.No. 79855

C.R.P. (NPD) No.1541 of 2018

ASK(19/12/2018)