IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4059 of 2014
and M.P.No.1 of 2014

1.N.K.Shanmugam
2.N.K.Soorappan
3.Vijaya
4.Sakthivel
5.Murugan
6.Saravanan
7.Deiva
8.Jayanthi
9.S.Sivasankaran
10.Shanthi
11.Kannan
12.Kumaran
13.Vasantha .. Petitioners

Vs

S.K.Velayudham .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.09.2013 made in E.P.No.43 of 2011 in O.S.No.181 of 2008 on the file of the Principal District Munsif-cum-Judicial Magistrate's Court, Vaniyambadi, Vellore District.

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For Petitioners : Mr.PA.Sudesh Kumar

For Respondent : M/S.V.V.Sathya for
Mr.M.V.Venkataseshan

O R D E R

The Civil Revision Petition is filed against the fair and decretal order dated 23.09.2013 made in E.P.No.43 of 2011 in O.S.No.181 of 2008 on the file of the Principal District Munsif-cum-Judicial Magistrate's Court, Vaniyambadi, Vellore District.

2. The petitioners are defendants 1 to 8 and respondent is plaintiff in O.S.No.181 of 2008 on the file of the Principal District Munsif-cum-Judicial Magistrate's Court, Vaniyambadi. The petitioners herein are respondents and respondent/decree holder is the petitioner in E.P.No.43 of 2011. The respondent filed the said suit for declaration and permanent injunction restraining the petitioners 1 to 8 from interfering with his peaceful possession and enjoyment of the suit property and for mandatory injunction directing the defendants 9 and 10/Government officials to transfer patta in the name of the respondent. The petitioners 1, 3 to 8 were set exparte and the said suit was decreed exparte by the judgment and decree dated 05.10.2010. The respondent filed E.P.No.43 of 2011 for punishing the petitioners for disobeying the decree. Notice was ordered and served

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on the petitioners. The petitioners took time for filing counter and even after taking number of adjournments, they did not file counter. Before the learned Judge, the respondent was examined as P.W.1.

3. The Executing Court considering the materials available on record, evidence of the respondent and judgments relied on by the counsel for the respondent, ordered the E.P. to the effect that the petitioners 1 to 9, 11 and 13 shall be arrested and kept in civil prison for a period of one month.

4. Against the said order dated 23.09.2013 made in E.P.No.43 of 2011 in O.S.No.181 of 2008, the present Civil Revision Petition is filed by the petitioners.

5. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

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6. The contention of the learned counsel for the petitioners is that in view of the punitive order passed against the petitioners, the petitioners must be given an opportunity to putforth their case. The order of arrest cannot be passed by asking by the respondent. The

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procedure as per Order XXI Rule 32 C.P.C. has not been followed and respondent has not proved that there is wilful failure on the part of the petitioners. In support of his contention, the learned counsel for the petitioners relied on the ***order of this Court dated 07.02.2011 made in C.R.P.(NPD)No.570 of 2004 (Ravichandran v. Datchinamoorthy).***

7. The above said contentions of the petitioners are contrary to the facts of the present case. The petitioners were given time for filing counter from 02.01.2012. The respondent was examined as P.W.1. Till 23.09.2013, the petitioners have not filed any counter and raised their objections with regard to their contentions. In view of number of adjournments granted by the Executing Court to enable the petitioners to file counter and in view of the failure on the part of the petitioners to file counter, the contention of the learned counsel for the petitioners that opportunity was not given to the petitioners, is not acceptable and the decision relied on by the learned counsel for the petitioners is not applicable to the facts of the present case. Further, the contention of the learned counsel for the petitioners that the respondent has not proved that the petitioners did not follow the procedure as per Order

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XXI Rule 32 C.P.C. and wilful failure on the part of the petitioners, also has no merits.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2018

Index:Yes/No

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To
The Principal District Munsif-cum-Judicial Magistrate

Vaniyambadi, Vellore District.

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V.M.VELUMANI,J.

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