



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2671 of 2015

and

M.P. (MD) No.1 of 2015

Solai Konar ...Petitioner/Respondent-Judgment Debtor No.1/
1st defendant

-vs-

Adaikalam ... Respondents/Petitioner-Decree Holder/
Plaintiff

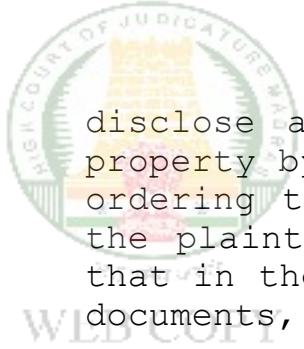
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the Civil Revision Petition by setting aside the order and decree dated 30.10.2015 passed in E.P.No.23 of 2009 in O.S.No.193 of 1990 on the file of the Hon'ble District Munsif Court, Manapparai, Trichy District.

For Petitioner : Mr.B.Prahalad Ravi
For Respondent : No Appearance

O R D E R

The revision petitioner is the 1st defendant in O.S.No.193 of 1990 on the file of the Hon'ble District Munsif Court, Manapparai, Trichy District and in the suit, the plaintiff sought for permanent injunction, etc, which was dismissed by the Trial Court, against which, the First Appeal preferred in A.S.No.401 of 1999 was allowed and thereafter, the defendants had filed a second appeal in S.A.(MD) No.483 of 2014, in which they did not succeed. Subsequently, the plaintiff had filed E.P.No.23 of 2009 in O.S.No.193 of 1990 on the file of the District Munsif Court, Manapparai, Trichy District, in which, the Trial Court, finding prima facie material against the defendants, has ordered for their arrest. Aggrieved by the same, the revision petitioner/1st defendant is before this Court.

2. It is the case of the revision petitioner / 1st defendant that though the case went upto second appeal, the Trial Court, without even conducting any trial in the execution petition and without considering the age of the petitioner, has ordered to arrest him. Though the suit in respect of permanent injunction was decreed in favour of the plaintiff, the execution petition did not



disclose as to the manner of interference in the suit schedule property by the defendants and therefore, the Trial Court erred in ordering the arrest only on the basis of the complaint lodged by the plaintiff. It is the further case of the revision petitioner that in the absence of clear evidence of interference and material documents, the petition should have been dismissed.

3. The revision petitioner states that when the allegation of interference is highly doubtful, the question of immediate arrest of the defendants does not arise at all and the Trial Court, without proper application of mind, has simply passed the impugned order, which warrants interference by this Court and the order of the Trial Court is liable to be set aside.

4. Heard learned counsel for the petitioner and also perused the material documents available on record. There is no representation on behalf of the respondent.

5. A circumspection of the fact would reveal that though initially the plaintiff did not obtain any decree from the Trial Court in his favour, he was able to succeed in the subsequent appeals. Consequent to his success in the case, since the defendants did not obey the orders of the Court, the plaintiff, besides lodging a complaint with the Police, had filed an Execution Petition due to the interference by the defendants. The Court below, mainly taking into consideration the complaint in Ex.P4 and R.W.1 evidence, has ordered for arrest of the defendants. There is no second opinion that if the order of the Court is disobeyed, certainly serious action has to be taken, but at the same time, the procedures as adumbrated under the relevant laws have to be adhered to too.

6. In the present case on hand, it is the main contention of the petitioner herein that the act of interference has not been duly established, in the absence of which and merely relying upon the complaint of the plaintiff, orders have been passed without even hearing the defendants, who are stated to have disobeyed the order. Therefore, I find much force in the contention raised by the learned counsel for the petitioner, inasmuch as before proceeding against a person, he must be heard and an opportunity must be afforded, without which, the order would be hit by the principles of violation of natural justice. Hence, I am of the view that the order of the Trial Court is not sustainable and is liable to be set aside.

7. In the result,

a) this civil revision petition is allowed, thereby setting aside the order and decree dated 30.10.2015 passed in E.P.No.23 of 2009 in O.S.No.193 of 1990 by the learned District Munsif, Manapparai, Trichy District.



No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(w)

WEB COPY

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

The District Munsif,
Manapparai,
Trichy District.

+1cc to Mr.B.Prahalad Ravi, Advocate Sr.No.76672

AR

VB/SKN/SAR4/26.10.2018/3P/3C

C.R.P. (PD) (MD) No.2671 of 2015
31.07.2018