



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.02.2018
DELIVERED ON : 10.04.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2120 of 2017
and
C.M.P. (MD) No.10537 of 2017

C.Ravichandran : Petitioner / 1st Respondent /
3rd Defendant

vs.

1. S.Vellaisamy : 1st Respondent / Petitioner /
Plaintiff
2. The Deputy General Manager
and retail sales Manager,
Indian Oil Corporation,
Tamil Nadu State Office,
139, Nungambakkam High Road,
Chennai - 34.
3. The Senior Divisional Manager,
Trichy Divisional Office, IOC,
B-35, Triveni, 3rd Floor, Shastri Road,
Thillai Nagar, Trichy - 18. : Respondents 2 & 3/Respondents
2 & 3 / 3rd Parties

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.02.2017 passed in I.A.No.1263 of 2016 in I.A.No.963 of 2015 in O.S.No.291 of 2005 on the file of the II Additional Subordinate Judge, Tiruchirappalli.

For Petitioner : Mr.R.Sundar Srinivasan
For Respondents : Mr.C.Jegananathan for R.1
Mr.K.Muralidharan for R.2 & R.3

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned II Additional Subordinate Judge, Tiruchirappalli in I.A.No.1263 of 2016 in I.A.No.963 of 2015 in O.S.No.291 of 2005 dated 17.02.2017.



2. The facts of the case are that the first respondent herein, as plaintiff, has filed the suit for partition in respect of 11 items of property, against the petitioner's father and others. According to the petitioner, the 11th item of property has been purchased by his father, vide registered sale deed dated 12.11.1964. Despite the same, the first respondent herein has included the said property also, alleging that the same belongs to the joint family. According to the petitioner, his father was afflicted by Paralysis and was bed ridden. It is the grievance of the petitioner that though his father entered appearance through a Counsel, without any notice, on 22.08.2008 an ex-parte order of interim injunction, restraining alienation and also altering the physical features, was granted against him in I.A.No.349 of 2008 and in the meantime, his father expired on 29.08.2009. Thereafter, the petitioner and his brothers as well as sisters were impleaded in the suit as legal heirs and detailed written statement disputing various claims and allegations was filed and now, the suit is ripe for trial.

3. Since the relief of injunction being a personal remedy, the first respondent has filed an application in I.A.No.1107 of 2014 seeking injunction against the legal heirs/petitioner and others. But, the said application was later on dismissed as not pressed. Therefore, according to the petitioner, the injunction that was granted against his father ceased to have no force, after the death of the person against whom it has been passed. As against the petitioner and others, the injunction application was withdrawn and therefore, he has put up a petrol outlet in the suit item no.11, which was conveyed to him vide deed dated 07.10.2010. Citing this, the first respondent has filed an interlocutory application in I.A.No.963 of 2015 for contempt action against the petitioner.

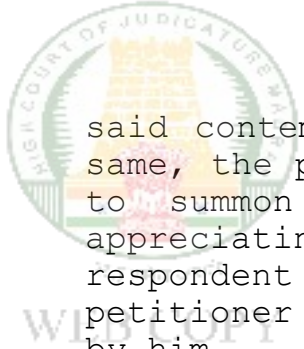
4. At this juncture, the petitioner has filed the present interlocutory application in I.A.No.1263 of 2016 for summoning the first respondent to witness box, regarding the allegations contained in the affidavit filed in support of the contempt petition, so as to expose the omissions and commissions committed by the first respondent. The Trial Court, after hearing both the parties, has dismissed the petition and hence, the present Revision came to be filed.

5. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

6. The learned Counsel for the petitioner would submit that duty has been cast upon the party who alleges commission of contempt to establish that

- *there should be an order in force against the person, against whom contempt action is sought to be taken;*
- *the alleged contemnor should be put on notice; and*
- *there should be wilful and deliberate disobedience of the said order.*

But, without application of mind, the lower Court has accepted the



said contempt petition, mechanically and in order to elucidate the same, the petitioner has filed the present interlocutory application to summon the first respondent and the trial Court, without appreciating these facts has dismissed the plea. As the first respondent has not come to the Court with clean hands, the petitioner has to cross examine the deponent on the affidavit filed by him.

7. In support of his contention, he would place reliance on the judgment reported in **AIR 1981 AP 406**, wherein, it is held as follows:

"When affidavits are filed by the parties, each set of affidavits affirming the case of each of the contending parties and the Court considers it necessary to examine one or some or all of the deponents to arrive at a proper decision of the requirements for the grant or refusal of a temporary injunction it would not be correct to say that the Court has no power to summon any of the deponents, but that the Court has to necessarily pass an order one way or the other even if there should be no judicial satisfaction in regard to the existence or otherwise of the facts constituting the requirements for the grant of a temporary injunction. The Court has always its inherent power to pass such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court."

8. For summoning of the witnesses, this Court feels that it is useful to extract Order 19 Rule 2 of the Civil Procedure Code, which reads thus:

"2. Power to order attendance of deponent for cross examination:-

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs."

9. The interpretation of the above provision has been clearly held by this Court in the judgment reported in **2015 (1) MLJ 443**, which reads thus,

"It is their contention that affidavit filed in support of application seeking interim injunction has to be construed as an affidavit filed under Order 19 Rule 2 Civil Procedure Code and therefore, plaintiff should be directed to attend Court for cross-examination - Issue in this Civil Revision Petition is whether affidavit filed in support of interim application, in this case seeking interim injunction, has to be construed as an affidavit of deponent



as contemplated under Order 19 Rule 2 Civil Procedure Code - Held, an affidavit referred to under Order 19 Rule 2 Civil Procedure Code is certainly not affidavit filed in support of application, but it means only proof affidavit of witness, who is produced by plaintiff/defendant in support of their respective claim - Affidavit filed in support of application is only a statement of fact which itself is not an evidence - Applicant, if he chooses, has to establish such statement of fact by letting in evidence and such evidence may be by proof affidavit, as contemplated under Order 19 Rules 1 and 2 of Civil Procedure Code - Only when such proof affidavit is filed, other side can seek for cross examination of deponent of such proof affidavit - Otherwise, it cannot be done.."

10. Moreover, this Court, in the judgment reported in **AIR 1962 Madras 450**, has clearly held that when there is a conflict between two decisions of various High Court, the judgment of the High Court under whose jurisdiction the Courts are coming has to be followed. In the present case on hand, as there is a slight conflict between the two decisions, the Court below, based on **AIR 1962 Madras 450**, has rightly adopted the decision rendered in **2015 (1) MLJ 443** and thereby, dismissed the interlocutory application.

11. In view of the foregoing discussions and also taking into account the decision rendered by this Court in **2015 (1) MLJ 443**, this Court is of the considered opinion that the order of the trial Judge needs no interference from this Court. However, considering the facts and circumstances of the case, this Court, while declining to interfere with the impugned order, to meet the ends of justice, issues the following direction:

"The learned Judge, while dealing with the contempt application, is directed to look into the contentions raised by the petitioner and dispose of the same in accordance with law, by giving enough opportunities and by letting in evidences, within a period of four weeks from the date of receipt of a copy of this order."

12. This Civil Revision Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



The II Additional Subordinate Judge,
Tiruchirappalli.

WEB COPY

- + 1 CC TO Mr.R.SUNDAR SRINIVASAN, ADVOCATE IN SR No. 60495
- + 1 CC TO Mr.K.MURALEEDHARAN, ADVOCATE IN SR No. 60578
- + 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 60788

GK

TE/KK/SAR-3 : 23/04/2018 : 5P/5C

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