



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.10.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (NPD) (MD) No.1634 of 2018
and
CMP(MD)No.7177 of 2018

Dhakshinamoorthy ... Petitioner/1st Respondent/
1st Defendant
Vs.
1.Veluchamy (died) ...1st Respondent/Petitioner/Plaintiff
2.Kaliammal
3.Guruvammal
4.V.Ponnuthay
5.V.Senthoo Pandiyan ... Respondents 2&3/Respondents 2&3/
Defendants 2&3

(R4 & R5 are brought on record as
LRs of the deceased R1 vide court order
dated 19.07.2018 made in CMPMD)No.5774 of 2018
in CRP(MD) SR No.13387 of 2018)

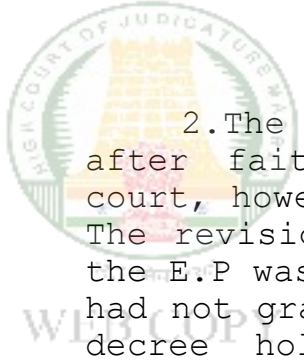
Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in E.P No.53 of 2014 in O.S No.287 of 2003 dated 24.04.2017 by the Principal District Munsif Court, Srivilliputhur and consequently dismiss the execution petition.

For Petitioner : Mr.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondents : R1 - Died,
R3 & R4 - No appearance
R2-Expired, R5 - Not claimed.

ORDER

One Veluchamy filed O.S No.287 of 2003 on the file of the District Munsif Court, Srivilliputhur seeking the relief of mandatory injunction and permanent injunction.The revision petitioner herein figured as first defendant in the said suit. The suit was decreed on 13.04.2007. Aggrieved by the same, the revision petitioner herein filed A.S No.47 of 2007 before the Sub Court, Srivilliputhur. The first appellate court partly allowed the appeal filed by the revision petitioner. The first appellate court held that mandatory injunction granted in respect of the sunshade stood set aside. Likewise, Clause 1 of the decree passed by the trial court granting mandatory injunction was also set aside. However, the relief of permanent injunction granted by the trial court was sustained.



2.The decree holder filed E.P No.53 of 2014. The decree holder after faithfully extracting the decree passed by the appellate court, however chose to pray for the relief of mandatory injunction. The revision petitioner herein filed his counter pointing out that the E.P was liable to be dismissed because the first appellate court had not granted any relief of mandatory injunction in favour of the decree holder. The revision petitioner also took the plea of limitation. Even assuming that the first appellate court had granted the relief of mandatory injunction, it has to be put to execution within a period of three years. The decree of the first appellate court is dated 17.10.2008. The execution petition came to be filed only on 27.07.2014. The executing court by the order impugned in this civil revision petition had allowed the execution petition and appointed an Advocate Commissioner for enforcing the mandatory injunction. The same is questioned in this civil revision petition by the revision petitioner.

3.During the intervening period, the decree holder passed away. His LRs namely, wife V.Ponnuthay and Son V.Senthoor Pandian have been impleaded as respondents 4 and 5. Notices were sent both through court and privately. The fourth respondent herself received the notice and her name is also printed in the cause list. The fifth defendant not claimed the notice issued from the Registry of this Court. Since the fourth defendant's name is printed in the cause list, I am of the view that the matter can be taken up and decided on merits.

4.As rightly pointed out by the learned counsel appearing for the revision petitioner even though the suit was decreed as prayed for granting both the reliefs of mandatory injunction and permanent injunction, in appeal, the first appellate court set aside the decree insofar as the grant of mandatory injunction was concerned. What was granted to the plaintiff ultimately was only the relief of permanent injunction. In the execution petition filed by the decree holder, it has not been averred that the judgment debtor has put up the offending construction in violation of the decree for permanent injunction. If that be so, they are to be removed. But, it is not the case here. The decree holder is virtually seeking to enforce the relief of mandatory injunction which was denied by the first appellate court. What the first appellate court denied, the executing court cannot grant. The executing court has obviously misconstrued the scope of relief of permanent injunction. In this view of the matter the order impugned in this civil revision petition is set aside. This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/



To

The Principal District Munsif Court,
Srivilliputhur.

WEB COPY

+1CC to M/s.Polax Legal Solutions, Advocate, SR.No.88973

CRP (NPD) (MD) No.1634 of 2018
and
CMP (MD) No.7177 of 2018
05.10.2018

SKM

ES/SV/SAR 3/01.11.2018/3P/3C