

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3487 of 2010

G.Rajendran

... Petitioner

Vs.

The Residents of Rajakoil Colony
represented by their Nattanmaidar M.Muthu
s/o Murugan, Raja Kovil Village,
H/o Sethuvandai Post,
Gudiyattam Taluk.

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 03.06.2019 passed in unnumbered E.P.-/ 2010 in O.S.No.634 of 1998 on the file of the District Munsif, Gudiyattam, Vellore District.

For Petitioner : Mr.K.A.Ravindran

For Respondent : No appearance

ORDER

The civil revision petitioner is the decree holder in O.S.No.634 of 1998 on the file of the District Munsif, Gudiyattam. He filed the suit in O.S.No.634 of 1998 for a permanent injunction restraining the

respondent/defendant from interfering with his peaceful possession and enjoyment of the suit property and the suit was decreed in favour of the revision petitioner vide decree and judgment dated 29.12.2006. In order to execute the decree, the plaintiff filed an execution application before the District Munsif, Gudiyattam under Order XXI, Rule 11(2) and (32) of the Code of Civil Procedure for a direction to demolish the buildings put up in the suit property with the help of Deputy Superintendent of Police and to arrest the respondent and put him in civil prison till the execution of the decree.

2. The main contention of the revision petitioner in the execution petition is that though an order of injunction was granted in his favour on 21.06.2007, the respondent trespassed into the suit property during the year 2009 and cut three coconut tress and also put up certain constructions.

3. The learned District Munsif, Gudiyattam, Vellore District rejected the execution petition on the following grounds.

(i) The suit in O.S.No.634 of 1998 was filed by the civil revision petitioner only for a permanent injunction and not for a mandatory injunction.

(ii) The decree holder did not approach the court immediately after the constructions put up by the respondent in the suit property.

(iii) The executing court cannot go beyond the decree.

Aggrieved over the said orders passed by the learned District Munsif, Gudiyattam on 03.06.2010, the civil revision petition is filed by the decree holder.

4. The learned counsel appearing for the civil revision petitioner contended that though an order of permanent injunction was granted in favour of the civil revision petitioner in O.S.No.634 of 1998 during the year 2007, the respondent trespassed into the suit property only during the year 2009 and immediately the decree holder had approached the executing court for removal of the obstructions. His further contention is that the execution petition filed by the civil revision petitioner is perfectly in order and the learned District Munsif, Gudiyattam did not consider the allegations made by the decree holder in the execution petition. He also relied on the decision in ***Kanakamma Vs. Mamalan reported in 2000 (II) CTC 240*** and contended that the plaintiff is entitled to file execution petition for every recurring infringement as long as application is filed within time and that the plaintiff should not be driven for filing a second suit.

5. No appearance on behalf of the respondent.

6. A perusal of the records show that the civil revision petitioner filed a suit in O.S.No.634 of 1998 before the District Munsif, Gudiyattam seeking for a permanent injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit property. The suit was decreed on 21.06.2007. According to the civil revision petitioner, subsequent to the passing of the decree, the respondent trespassed into the suit property and cut three coconut trees and also put up constructions in the suit property. Therefore, he filed an execution petition under Order XXI Rule 11(2) and (32) of the Code of Civil Procedure to direct the respondent to hand over vacant possession of the suit property to the plaintiff and also to put the respondent in civil prison till the decree is executed.

7. The only point that has to be considered here is whether the decree holder who obtained an order of permanent injunction can seek for removal of constructions in the suit property in an execution petition?

8. In the said decision in ***Kanakamma Vs. Mamalan reported in 2000 (II) CTC 240***, the decree holder filed a suit in O.S.No.121 of 1986

before the District Munsif, Kuzhithurai and she obtained a decree against the respondent on 25.09.1989 for a declaration of her title to the property and an order of injunction restraining the respondent from entering the suit property and putting up any construction. Subsequently, the decree holder filed E.P.No.124 of 1990 under Order XXI, Rule 32 of the Code of Civil Procedure alleging that the respondent in defiance of the decree passed against her, committed trespass upon the suit property and put up a shed and a building and that it has to be removed from the suit property. The said petition was allowed and delivery was also effected as per the direction of the court on 18.12.1992. Thereafter, the decree holder filed a fresh execution petition in E.P.No.120 of 1995 alleging that the respondent, after the execution of decree on 24.02.1995, entered the property once again and put up a shed and the same had to be removed. The learned District Munsif, Kuzhithurai dismissed the application holding that decree for prohibitory injunction could not be executed as provided for in Order XXI, Rule 32(5) and that once the decree holder had been given possession, there could not be a fresh application for the same relief and the petitioner should file a separate suit. As against the said order, civil revision petition was filed before this court and the learned Single Judge, after referring to various decisions had held that for every recurring infringement, the executing is duty bound to give relief to the decree holder and cannot drive

the petitioner to a separate suit.

9. In the said decision, a judgment of S.S.Subramani.J in *Kaliammal and another Vs. D.C.Arunachalam and six others reported in 2000(II) CTC 136* was referred, wherein, in paragraph No.16 it has been held thus.

" When Court declares that the plaintiff is entitled to make use of the cart track, various rights flow from that. It recognises plaintiffs' right to make use of the same and also recognises that plaintiffs can use the same without any obstruction from any source and when defendants cause obstruction, prohibitory injunction is also given directing them not to disturb the right of plaintiffs in making use of the same. If that is the effect of the decree, can it be said that plaintiffs while asking for issue of commission to remove obstruction are not entitled to apply for the same since there is no mandatory direction against defendants. I do not think that the interpretation given by learned counsel for petitioners is correct. Plaintiffs are only making use of the cart track as they

were using and are entitled to use it without any obstruction. It is that part of the decree they are enforcing against the defendants. Along with the same, there is also a decree for injunction. When both these reliefs are granted to plaintiffs, argument of learned counsel for petitioners that so long as there is no mandatory injunction against defendants, application under Rule 32(5) is not maintainable cannot be accepted."

Further, it has been held that

" Asking plaintiffs to file a separate suit will be unjust and the court also will be pleading its helplessness to plaintiffs when they come to court with genuine grievance. To shorten the litigation and also considering the interest of justice. I feel that the impugned order is only to be confirmed and I do so."

WEB COPY

10. The executing court had rejected the execution petition filed by the revision petitioner mainly on the grounds that the civil revision petitioner did not obtain any order of mandatory injunction and that the executing court cannot go beyond the decree. Merely because no

mandatory injunction was granted in favour of the plaintiff, the executing court cannot reject the execution petition, even without numbering it. In fact, the executing court has every right to pass appropriate orders for removal of the obstructions, in order to give effect to the decree passed by the trial court. Therefore, the order of the executing court is liable to be set aside.

11. In the result,

(i) The Civil Revision Petition is allowed. No costs.

(ii) The executing court is directed to number the execution petition and consider the same afresh, in the light of the observations contained in the civil revision petition

17.07.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order

mst

To

The District Munsif, Kudiyattam, Vellore District.

WEB COPY

R.HEMALATHA,J.
mst



CRP (NPD) No.3487 of 2010

WEB COPY 17.07.2019