

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2019

PRONOUNCED ON : .07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1035 of 2015
and M.P.No.1 of 2015

The Arul mugu Visweswarasamy and Arulmigu
Veeraragava Perumal temples,
Rep.by C.Balamurugan
Executive Officer

.. Petitioner

vs

1.M.Rajagopal
2.M.Rajammal
3.Marimuthu @ Mariappan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the decree and judgment dated 31.10.2014 made in E.A.No.10 of 2013 in E.P.No.15 of 2008 on the file of the District Munsif Court, Tiruppur.

For Petitioner : Mr.V.P.Karthikeyan

For R1 : M/s.D.Chitramaragatham

For R2 & R3 : No Appearance

ORDER

The petitioner is aggrieved by the impugned fair and decretal order dated 31.10.2014 passed in E.A.No. 10 of 2013 in E.P.No.15 of 2008 in O.S.No. 48 of 2006 by the District Munsif Court, Tiruppur.

2. By the impugned order, the District Munsif, Tiruppur has dismissed the application filed by the petitioner under Order 21 Rule 97 (2) of CPC. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

3. Briefly the facts are that the 1st respondent had originally filed a rent control proceeding against the 2nd and 3rd respondents. The said rent control case was dismissed. Further, the first respondent has filed R.C.A.No.16 of 1998 before the Rent Control Appellate Court and the same was also dismissed.

4. Therefore, the 1st respondent filed O.S.No.46 of 2005 before the District Munsif, Tiruppur for a declaration that the suit property was that of the 1st respondent and to direct the 2nd and 3rd respondents herein to pay the damages of Rs.7,200/- for occupying the suit schedule properties for a period of three years till the date of suit. The Executive Officer of the petitioner was the 1st defendant.

5. Since the petitioner and the 2nd and the 3rd respondents remained absent in the suit, an ex parte decree came to be passed by the District Munsif Court, Tiruppur on 28.0.2006.

6. Thereafter, the 1st respondent filed E.P.No/15 of 2008 in O.S.No.46 of 2005 to enforce the ex parte decree dated 28.04.2006. In the aforesaid proceeding, the petitioner filed E.A.No.10 of 2013 in E.P.No.15 of 2008 in O.S.No.45 of 2006 under Order 21 Rule 97 (2) of the Civil Procedure Code to record the obstruction on the ground that the deity of the temple was a separate person and therefore the obstruction of the deity represented by the petitioner should be recorded.

7. The District Munsif concluded that remedy under Order 21 Rule 97 (2) of the Civil Procedure Code was not available to the petitioner and therefore the same was liable to be rejected.

8. Heard the learned Counsel for the petitioner and the 1st respondent.

9. The petitioner relied upon the decision of the Honble Supreme Court in the following 'two cases in support of the present Civil Revision Petition:-

- a) **Bhanwar Lal versus Satyanarain** 1995 (1) SCC 6;
- b) **Silverline Forum Private Limited versus Rajeev Trust** 1998 (3) SCC 555.

10. Per contra, the learned counsel for the 1st respondent submits that the impugned order is well reasoned and does not require any interference under Article 227 of the Constitution of India. He placed reliance in the decision of the Hon'ble Supreme court in **S.Rajeswari Vs. S.N. Kulasekaran and others** 2006 4 SCC 412

11. I have considered the rival submissions. The language of Order 21 Rule 97 makes it clear only the decree holder or the purchaser of the property sold in execution of a decree, who is faced obstruction by any person may make an application to the court complaining of such resistance or obstruction.

12. The decision of the Honble Supreme Court in **Bhanwar Lal versus Satyanara** in 1995 (1) SCC 6, however observed that remedy under the aforesaid provision is also available to 'the judgment debtor.

13. The court further held that a reading of Order 21 Rule 97 of the Civil Procedure Code clearly envisages that "any person" even including the

judgment debtor irrespective whether he claim derivative title from the judgment debtor or set up his own right title or interest *de horse* the judgment-debtor and he resists the execution of a decree, then the court in addition to the power under Rule 35 (3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of the immovable property was legal or not.

14. At the same time, the Hon'ble Supreme Court also held "Since each occasion obstruction or resistance furnishes cause of action to the decree holder to make an application for removal of obstruction or resistance by such person.

15. The above decision of the Honble Supreme Court was followed in **Silver line Forum Private Limited versus Rajeev Trust** 1998 (3) SCC 555. 'Both the decisions deal with the rights of a decree holder when faced with obstruction/resistance. In **P.Janardhana Rao Vs. Kannan**,(2004) 11 SCC 511, the Hon'ble Supreme court held that Order 21 Rule 97 of CPC is the provision for the removal of the person bound by the decree who does not vacate. It takes into account a situation where resistance to possession is offered by the judgment -debtor or any other person bound by the decree which will include the claim of a person who claims to be in possession in the right and independent of the judgment debtor but whose claim *ex facie* is

unsustainable. Where, however, resistance is offered or where obstruction proceeds from the claimant claiming to be in possession in his own right and whose claim cannot be rejected on the ground of want of good faith, without investigation, the decree- holder must proceed under Order 21 Rule 97 of C.P.C.

16. I do not find any merits in the present Civil Revision Petition. In any event, the person to be removed has to be heard before removal of obstruction is ordered. The petitioner as a judgment-debtor who has suffered decree cannot file a petition under Order 21 Rule 97 of CPC to delay execution. At the same time, the petitioner is entitled to be heard in the petition filed by the 1st respondent decree holder under the aforesaid provision r/w order 21 rule 35 of CPC.

17. Therefore, the impugned fair and decretal order passed by the District Munsif Court, Tiruppur in E.A.No.10 of 2013 in E.P.No.15 of 2008 in O.S.No.48 of 2006 is upheld. In case the E.P No. 15 of 2008 is still pending, the learned District Munsif, Tiruppur is directed to dispose the same, within a period of six months from the date of receipt of a copy of this order. The petitioner is entitled to take all defences that are available under law.

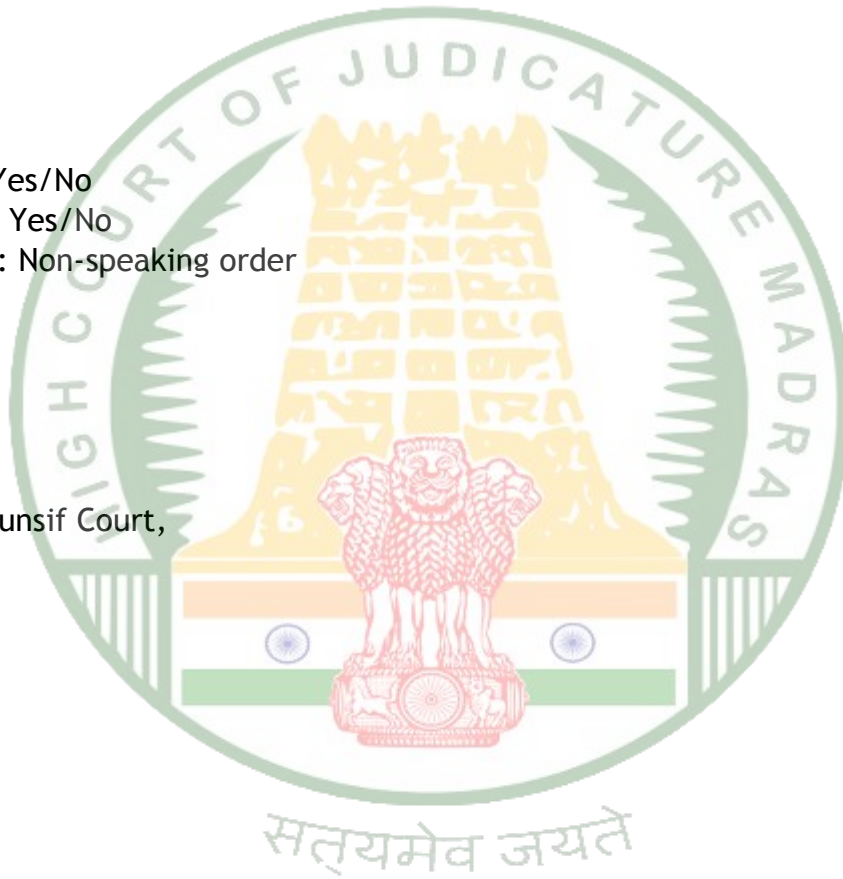
18. The present Civil Revision Petition thus stands dismissed with the above observations. No cost. Consequently, connected miscellaneous petition is also closed.

03.07.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
kkd

To

District Munsif Court,
Tiruppur.



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C.SARAVANAN,J.

kkd



Pre-delivery order in
C.R.P(NPD) No.1035 of 2015
and M.P.No.1 of 2015

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