

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.11.2019

Pronounced On : 25.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4630 of 2014
and M.P.No.1 of 2014

1. Nallammal
2. Jayachandran
3. Selvaraj

.. Petitioners

Vs

Kandasami Mooper [Died]

1. Manimaran
2. Elangovan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 01.04.2011 made in EP.No.455 of 2006 in OS.No.510 of 1993, on the file of the District Munsif Court, Kallakurichi.

For Petitioners : Mr.R.Raji
for Mr.S.Saravanakumar

For Respondents : Mr.V.Anand

ORDER

Respondents in EP No.455 of 2006 in O.S.No.510 of 1993 are the petitioners in this Civil Revision Petition.

2. Earlier, before the District Munsif Court, Kallakurichi, the respondents/plaintiffs in the Civil Revision Petition filed the above referred Execution Petition, as against the revision petitioners/defendants seeking the relief to arrest the revision petitioners/defendants and send them to civil prison under Order XXI Rule 32 of Code of Civil Procedure.

3. The learned Principal District Munsif, Kallakurichi, by order dated 01.04.2011, moulded the relief prayed for by the respondents/plaintiffs, in the Execution Petition and directed the revision petitioners/defendants to remove the PVC pipeline, which was laid in the suit scheduled property, within a period of two months and in default, they would be sent to the civil prison, in accordance with law.

4. Aggrieved over the same, the respondents in EP No.455 of 2006, are before this Court with the present Civil Revision Petition.

5. Before filing the Execution Petition, the father of the revision petitioners viz., Kandasami Mooper (since deceased) filed a suit in O.S.No.510 of 1993, as against the revision petitioners, seeking the relief of declaration and permanent injunction in respect of the suit scheduled

property. The suit was decreed in favour of the said Kandasamy Mooper (since deceased).

6. It is the case of the respondents/plaintiffs before the trial Court that after granting the decree of declaration in favour of the respondent/plaintiffs, the revision petitioners herein/defendants forcibly entered into the suit scheduled property and laid the PVC pipeline. Only on that score the learned Principal District Munsif, Kallakurichi came to the conclusion that the contention raised by the respondents/plaintiffs, is a bonafide one and ultimately ordered the Execution Petition, as observed earlier.

7. Today, when the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioners/defendants would contend that without evidence to show that the revision petitioners/defendants only laid the PVC pipeline in the suit scheduled property, the Court below has directed the revision petitioners/defendants to remove the PVC pipeline found in the suit scheduled property, which is erroneous in law.

8. On the other hand, the learned counsel appearing for the respondents/plaintiffs would contend that before completion of trial, based on the application filed by the respondents/plaintiffs, an Advocate Commissioner was appointed for the purpose of noting down the physical features of the suit scheduled property and for filing the report. In the report filed by the learned Advocate Commissioner, who was already appointed, he has not stated anything about the laying of the PVC pipe in the suit scheduled property. On the other hand, the learned Advocate Commissioner, who was appointed during the pendency of the Execution proceedings, for the purpose of noting down the physical features, has stated in his report that the PVC pipeline is found in the suit scheduled property. Therefore, the impugned order passed by the Court below, is well within the principles of law and only after moulding the relief, the said Court passed such a well considered order and thereby, no interference of this Court is necessary in the impugned order passed by the Court below.

9. Upon considering the arguments advanced by either side, it is not in dispute that before passing the decree, an Advocate Commissioner was appointed and also during the Execution Proceedings, one another Advocate Commissioner was appointed, to note down the physical features.

10. It is also not in dispute that in the earlier report filed by the learned Advocate Commissioner, he has not stated anything about the laying of the PVC pipeline in the suit schedule property. However, in the report filed by the learned Advocate Commissioner who was appointed at the time of Execution Proceedings, has clearly mentioned that in the suit schedule property, there is PVC pipeline.

11. In this connection, on going through the impugned order passed, the learned Principal District Munsif, Kallakurichi, has clearly held that if the PVC pipeline had been laid before passing the decree, it would have been noted down by the learned Advocate Commissioner, appointed during trial. Therefore, the circumstances reveals the fact that only after granting the decree or in the interregnum period after institution of the suit, the PVC pipeline would have been laid by the revision petitioners/defendants.

12. Further, since the decree dated 11.08.1997, has not been set aside so far, it cannot be said that the order passed by the Court below, is having any material irregularity. The decree passed in OS No.510 of 1993, by the learned Principal District Munsif, Kallakurichi, becomes final and being the plaintiffs, the respondents are entitled to avail the fruits of the

decree. Only on that score they have filed the Execution Application and resultantly, the same has been disposed of as above, only after moulding the relief in favour of the respondents/plaintiffs.

13. Therefore, this Court is of the considered opinion that no irregularity is committed by the Court below, while passing the impugned order. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

25.11.2019

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

The Principal District Munsif, Kallakurichi

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R.PONGIAPPAN, J.,

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Pre-delivery Order in
CRP (NPD) No.4630 of 2014
and M.P.No.1 of 2014

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