



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD)No.640 of 2020

and

C.M.P.(MD)No.4175 of 2020

WEB COPY

Ayyavoo Pandithan (Died)

K.Nanthirajan

: Petitioner/Petitioner/Respondent/LR of
Defendant

.. Vs ..

Naina Mohamed (Died)

Nagoor Kani

: Respondent/Respondent/Petitioner/LR of
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order dated 28.01.2020 made in E.A.No.35 of 2019 in E.P.No.68 of 2018 in O.S.No.89 of 1978 on the file of the District Munsif Court, Madurai and allow the above Civil Revision Petition.

For Petitioner : Mr.D.Senthil

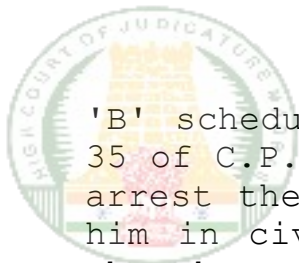
ORDER

This Civil Revision Petition is directed against the order dismissing the petition filed by the petitioner before the executing Court to decide the maintainability of the execution petition as preliminary issue.

2.Heard the learned Counsel appearing for the petitioner and perused the materials available on record.

3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.1.The revision petitioner is the legal representative of the defendant in the suit in O.S.No.89 of 1978 on the file of the District Munsif Court, Melur. The suit in O.S.No.89 of 1978 was for declaration of title and permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit was decreed by a judgment and decree dated 03.05.1980. It is admitted that the judgment and decree of the suit was confirmed in the appeal suit preferred by the defendant in the suit in A.S.No.216 of 1980. After several years from the date on which the suit was decreed, the plaintiff in the suit filed an execution petition in E.P.No.68 of 2018 praying for a direction for removal of temporary thatched shed built by the revision petitioner herein and to



'B' schedule property. The said prayer was under Order 21, Rule 35 of C.P.C. and again the prayer in the execution petition was to arrest the revision petitioner for his illegal conduct and to put him in civil prison. The revision petitioner, as legal heir of the deceased defendant, objected to the maintainability of the execution petition mainly on the ground that the execution petition is highly belated and barred by limitation. He also filed an interlocutory application in E.A.No.35 of 2019 in E.P.No.68 of 2018 to decide the maintainability of the execution petition as a preliminary issue. The said petition was dismissed by the lower Court by relying upon Section 47 of C.P.C. Challenging the same, the above Civil Revision Petition is filed by the legal heir of the defendant in the suit.

4.Rejecting the application by referring to Section 47 of C.P.C. may not be proper as the question to be decided in a petition under Section 47 C.P.C. is regarding the executability of the decree. If any judgment-debtor who suffered a decree report full satisfaction of decree or discharge of the decree, it is open to the party to the suit to file an application under Section 47 of C.P.C. reporting satisfaction of the decree. In the present case, the execution petition is filed to execute the decree for mandatory injunction for removal of construction temporarily put up by the defendant in the suit property.

5.The decree for injunction is not executable like any other decree. The only provision by which a decree for injunction can be enforced is by a petition before the Court under Order 21, Rule 32 of C.P.C. For violation of decree for injunction, the judgment-debtor can be arrested and sent to Civil Prison. The prayer in the execution petition is also for arrest of the revision petitioner. The said petition cannot be dismissed on the ground of maintainability. The application should be decided on merits and hence, there is no scope for entertaining Civil Revision Petition even though the ground on which the petition was dismissed by the lower Court is not appropriate.

6.As a result, this Court finds no merits in this Civil Revision Petition. Accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



SRM

To
The District Munsif,
Madurai.

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+1 CC to Mr.D. SENTHIL, Advocate (SR-16725[F] dated 14/09/2020)

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