



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD)No.390 of 2021

Thirupathi

...Petitioner/Plaintiff

Vs

1.Venkataaraaman
2.Madhu
3.Chinnasamy
4.Govindhan
5.Shankar
6.Krishnan

...Respondents 1to6 /Defendants 1,3to7

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 05.10.2020 passed by the learned Additional District Munsif (FAC), Denkanikottai in Unnumbered R.E.P.No... of 2020 in O.S.No.185 of 2009, and consequently direct the R.E.P., to be numbered and proceed in accordance with law.

For Petitioner : Mr.Arun Anbumani

O R D E R

The present civil revision petition has been filed to set aside the fair and decretal order dated 05.10.2020 passed by the learned Additional District Munsif (FAC), Denkanikottai in Unnumbered R.E.P.No... of 2020 in O.S.No.185 of 2009, and consequently direct the R.E.P., to be numbered and proceed in accordance with law.

2. The petitioner herein had filed the suit in O.S.No.185 of 2009 for the relief of declaration, permanent injunction in respect of item No.1 of the properties and delivery of possession in respect of item No.2 of the properties on the file of the learned District Munsif cum Judicial Magistrate, Denkanikottai and got the decree on 19.08.2016. Thereafter, the petitioner has filed an execution petition in R.E.P.No.7 of 2019 for delivery of possession of item No.2 of the properties, which is still pending. Thereafter, the petitioner has filed a complaint before the Superintendent of Police, Krishnagiri District, subsequent to which, Crl.OP.No.188 of 2020 came to be



filed by the petitioner seeking police protection, which was dismissed by order dated 07.01.2020. The petitioner had then filed the unnumbered execution petition seeking police protection for laying down fence in the petition mentioned property, without issuing notice to the respondents. The said petition was taken up for hearing by the learned Additional District Munsif, Denkanikottai and the same was rejected by order dated 05.10.2020. Aggrieved by the same, the petitioner has preferred the present civil revision petition.

3. The learned counsel for the petitioner would submit that the Execution Court erred in dismissing the execution petition, without properly perusing the records. The learned counsel submitted that there is no bar for filing a second execution petition, when an earlier execution petition is still pending and hence, the order of the Execution Court in rejecting the unnumbered execution petition as not maintainable is contrary to law. It was further contended that the Execution Court ought to have noted the fact that when the decree covered separate and distinct properties and reliefs, it would be open to the decree holder to seek separate and successive execution of the decree. The learned counsel further submitted that the Execution Court ought to have directed the petitioner to implead the legal heirs of the deceased defendant, namely Perumal, rather than dismissing the petition. Hence, the learned counsel would submit that the order of the Execution Court is unsustainable and deserved to be set aside.

4. Heard the learned counsel for the petitioner and carefully perused the pleadings as well as the other materials available on record.

5. The said suit was decreed in favour of the plaintiff on 19.08.2016. The petitioner herein had filed the Execution petition seeking to grant police protection for laying down fence in the petition mentioned property. The petitioner herein is the Decree holder in O.S.No.185 of 2009, in which the first item of the suit property is in exclusive possession of the petitioner and permanent injunction has been ordered against the respondents/defendants. The petitioner had already tried to fence Item-1 of the suit property, but the defendants had interfered and stopped the same. The fourth respondent/defendant herein had filed a false compliant for the same in Rayakottai Police Station and FIR No.98/2018 has been registered against the petitioner/plaintiff herein on 07.03.2018. Though, being the decree holder in the said suit, the petitioner is unable to enjoy the fruits of the said decree due to the acts of the respondent/defendants. The petitioner does not want to get into any further trouble by being accused in false complaints given by the defendants.



6. It is seen that the petitioner had not issued notice to the defendants in the execution petition. It is the duty of the petitioner to issue notice and also to implead the legal heirs of the deceased defendant. The Execution Court cannot directly reject the petition, when the notice has not been served on the respondents. When cases of this nature are being heard by the Court, it is just and necessary to hear the contentions of both the sides. Hence, this Court feels that if an opportunity is given to the petitioner to issue notice to the respondents and a direction to implead the legal heirs of the deceased defendant with a subsequent direction to the Execution Court to decide the matter, after granting opportunities to both the petitioner as well as the respondents, the ends of justice could be secured.

7. In the light of the above observations, the learned Additional District Munsif (FAC), Denkanikottai, is called upon to direct his Registry to number the unnumbered R.E.P.No... of 2020 in O.S.No.185 of 2009, after affording opportunities to both the parties and thereafter, proceed further in accordance with law.

8. Accordingly, the present civil revision petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sbn

To

The Additional District Munsif (FAC)
Additional District Munsif Court,
Denkanikottai.

C.R.P. (NPD) No.390 of 2021

SR(CO)
PM(15/07/2021)