

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 934 of 2021

And

C.M.P.No. 7828 of 2021

M.Periathambai ... Petitioner/Petitioner/Plaintiff

-Vs-

1. Tamilnadu Industrial Invest Corporation Ltd.,
Rep. by its Branch Manager,
No.14, First West Main Road
Gandhi Nagar, Vellore.
V. Gunaseelan (died)
2. V.S.Nithyapathi ... Respondents/ Respondents 1 &
3/Defendants 1 & 3

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 29.10.2020 passed in I.A.No. 578 of 2010 in O.S.No. 924 of 1995 on the file of the Principal District Munsif of Tirupattur.

For Petitioner : Mr. S.Subbiah
Senior Counsel for
Mr. Elizabeth Ravi

For Respondents : Mr. K. Magesh

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 29.10.2020 in I.A.No. 578 of 2010 in O.S.No. 924 of 1995 on the file of the Principal District Munsif, Tirupattur.

2. I.A.No. 578 of 2010 had been filed by the revision petitioner herein under Section 152 of the Code of Civil Procedure to amend the decree. Two amendments were sought, namely, to incorporate the reliefs granted in the Judgment for declaration of title to the suit property and for grant of mandatory injunction.

3. O.S.No. 924 of 1995 has been filed by the revision petitioner/plaintiff for a declaration that an order of attachment of the suit property by the first defendant, namely, Tamil Nadu Industrial Investment Corporation Limited., is null and void and to declare the plaintiff's right,

title and interest in the property and also for a permanent injunction restraining the first defendant from proceeding with the property in any manner whatsoever and for a direction against the first defendant by a mandatory injunction to open the door of the suit property which is kept under lock and key. A Judgment was passed in the said suit on 05.09.2006 decreeing the suit.

4. It is the grievance of the learned senior counsel for the revision petitioner that the decree was not drafted in terms of the Judgment and therefore, they filed I.A.No. 578 of 2010 seeking to include the reliefs, as stated above with respect to declaration of title and with respect to grant of mandatory injunction, namely to break open the lock and seal of the property.

5. By the order now impugned, the learned Principal District Munsif, Tirupattur, had granted the relief of declaration of title. But the relief of mandatory injunction was not granted and the decree was refused to be amended to that affect. Questioning that particular order, this Revision Petition has been filed before this Court.

6. The first respondent, namely, Tamilnadu Industrial Investment Corporation Limited., has filed a counter affidavit and in the counter affidavit, they have stated as follows:-

“4. It is submitted that the above application is not maintainable and liable to be dismissed on the ground that the first respondent is no way connected with the suit property mortgaged by the second and third respondents herein, since the loan account is settled under OTS scheme and the NOC issued on 29.04.2013 itself and this respondent does not have the possession of the suit property and the same was in the possession/enjoyment by the borrower. At present the first respondent is no way connected with the suit property.

6. In the meantime, the second respondent herein came forward to settle the account under OTS scheme and the account was settled and closed and NOC was issued to the second respondent on 29.04.2013. Thereafter, this respondent has no right or interest over the suit property. At present, this respondent does not have possession of the suit property and even in the year 1995 they took only

constructive possession. Hence, the present application is not maintainable and liable to be dismissed.”

7. It is the stand of Mr. K.Magesh, learned counsel for the first respondent that the first respondent had never taken physical possession, but had taken only symbolic portion and that their accounts had been settled and therefore, they have no objection to the petitioner taking possession. But the learned counsel in the same breath also noted that it is the original borrower, namely, the third respondent, who will have to be heard if any such order is passed.

8. I would rather relegate the issue back to the trial Court and the petitioner may file a copy of the counter affidavit now filed by the first respondent before the learned Principal District Munsif, Tirupattur and thereafter, invite an order with respect to amending the decree to include the relief of mandatory injunction which has actually been granted in the Judgment.

9. Let the learned Principal District Munsif, Tirupattur, apply his/her mind with respect to grant or otherwise of mandatory injunction since the first respondent has very categorically stated that they do not have any existing right or interest over the property.

10. In such proceedings let notice be also issued to the third respondent herein V.S.Nithyapathi and thereafter, orders can be passed.

11. To that limited extent, this Civil Revision Petition is disposed by remitting back I.A.No. 578 of 2010 to the Principal District Munsif, Tirupattur, to give a finding with respect to amending the decree incorporating the relief of grant of mandatory injunction alone. I am confident that such a finding would be rendered on or before 30.09.2021. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2021

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

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C.V.KARTHIKEYAN, J.

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