



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	15.06.2021
PRONOUNCED ON	22.06.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

C.R.P.NO.1904 OF 2016

S.Suriyaprakash

.. Petitioner

Versus

1. M.George Rajkumar

2. M.D.Lalitha Sayanam

.. Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 CPC, seeking to set aside the order dated 02.04.2016 in E.P.No.54 of 2006 in O.S.No.83 of 2005 on the file of the District Munsif, Udhagamandalam, Nilgiris and consequently, to dismiss the Execution Petition as not maintainable.

For Petitioner : Mr.P.V.Selvarajan for
Mr.R.Aranganathan

For Respondents : No appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed, seeking to set aside order dated 02.04.2016 passed in E.P.No.54 of 2006 in O.S.No.83 of 2005 by the learned District Munsif, Udhagamandalam, Nilgiris and consequently, to dismiss the execution petition as not maintainable.

2. The Petitioner/ Contemnor herein is a third party. First respondent is the plaintiff and the Second respondent is the defendant.

3. The 1st respondent filed a suit in O.S.No.83 of 2005 before the learned District Munsif, Udhagamandalam against the 2nd respondent for grant of decree for permanent injunction. The said suit was decreed ex parte on 19.04.2005. Thereafter, the 1st respondent/plaintiff filed an Execution Petition in



E.P.No.54 of 2006 against the petitioner under Or.21 R.32 CPC for disobeying the decree of the court. The petitioner is none other than the son of the 2nd respondent/defendant. Though the petitioner was not a party to the suit, the 1st respondent/plaintiff filed the Execution Petition against him by stating that the petitioner being the family member of the plaintiff, is bound by the decree. The said petition was resisted by the petitioner by stating that he is not a party to suit and the Execution Petition is not maintainable. The Executing Court arrived at a finding that the decree of Permanent Injunction has been obtained by the plaintiff against the defendant and her family members and hence it will bind the petitioner and that he has to be arrested and sent to civil prison for disobeying the decree. Challenging the same, the petitioner has come forward with this Civil Revision Petition.

4. The arguments of the learned counsel for the petitioner heard. No representation for the respondents.

5. Mr.R.Aranganathan, learned counsel appearing for the petitioner would submit that the 1st respondent/plaintiff obtained an ex parte decree in the suit which was filed in a collusive manner by the first respondent joining with the 2nd respondent/defendant. The defendant wantonly remained ex parte and allowed the Court to pass the ex parte decree. According to the petitioner, the suit property is a joint family property and a partition suit was filed in O.S.No.200 of 1998 by the 1st respondent's paternal aunt, one Smt.Seetha Ranganathan and in which a preliminary decree was passed on 20.03.2003; thereafter, the petitioner and other co-parceners took possession of the suit property and from the year 2004 onwards, they have been in possession and enjoyment of the same; while so, the 1st respondent/plaintiff without the knowledge of this petitioner colluded with the 2nd respondent and filed the suit without impleading all the necessary parties.

6. The learned counsel for the petitioner would further contend that the decree cannot be executed against those persons who were not parties to the suit and hence the order of arrest made against the petitioner cannot be sustained and it is liable to be set aside.

7. In support of his contentions he relied on a decision of the Hon'ble Supreme Court reported in "(1992) 2 SCC 504 (Yashpal Singh versus VII Addl.District Judge and others)", wherein, it is held as under:

"1. The provision of Order 21 Rule 32(1) C.P.C is applicable to a party against whom a decree for injunction had been passed, [p.186A-B]



WEB COPY

2. The word 'party' occurring in Order 21 Rule 32(1), C.P.C. cannot be construed so liberally as to include each and every employee of the State to have been a party to the suit in which the injunction was passed

3. The intention manifested in the provision seems to confine the rigor to the party who had contested the suit and had suffered the decree and it is that party when obstructing is liable of being detained in the civil prison, or suffer attachment of his property, or both.

3.1. Although the Forest Department of the State of U.P. and the State of U.P. were parties, and, being an employee of the State of U.P., the appellant was in an indirect way bound by the injunction, yet it cannot be said that he was by himself a party to the suit as such against whom the said decree was passed.

3.2 The appellant was not a party to the suit in which the injunction was granted. He need not suffer action under Order 21 Rule 32 C.P.C. or to remain under threat of attachment of his property, more so when he is no longer available at the scene to obstruct any more or to expose his property to such supposed attachment."

8. The learned counsel also relied on another decision of the Full Bench of this Court reported in 1995 AIR (Mad) 281 (Kodia Gounder and another versus Velandi Goundar and others)", which reads as under:

"12. Whatever may be the view in England as regards the executability of such decrees solely founded on the observations of Buckley L. J. in '1914-2 KB 930 (F)', where, however, the question did not directly arise, but come to be incidentally, considered in judging the consequences of giving leave in a money suit against defendants in a representative capacity and



WEB COPY

the difficulties that would arise if the execution of such decrees against persons other than whom they sought to represent were to be ordered, the principle laid down in '12 Mad 365 (A)', has been consistently followed by our High Court in the later decisions. This principles that a decree for injunction cannot be extended so as to render, those who are not eo nomine' defendants liable for disobedience of the decree is based on sound and equitable grounds. Before any person could be proceeded against personally for disobedience of a decree of court, it must be shown that he was bound personally by the decree and obliged to obey such a decree. To entitle the decree-holder therefore to proceed against such persons who are not parties on record the injunction must be revived against them, which must be by a separate suit and in such a suit an opportunity will be afforded to them to raise appropriate defences. Without a revival therefore of the decree for injunction against these other persons, no proceedings in pursuance of the decree could be started against them.

If no execution of such a decree could be maintained against those persons who are not impleaded as defendants on the ground that they are not bound to obey the decree personally it is obvious that they cannot be held liable for any willful disobedience of such a decree. The result is that not only could there be no execution but there could be no application under Order 39, Rule 2, or under any other provision of law, for proceeding against those persons for such disobedience. We are of opinion that the decrees for injunction in these cases are neither executable nor enforceable against the contesting respondents."

9. Relying on the above decisions, the learned counsel submitted that the decree for injunction cannot be personally enforced against those persons who are not eo nomine parties to the suit or to the decree and they cannot be made them liable for disobedience of the decree. The Latin legal words eo nomine



means "by or under that name". It denotes that unless a party is impleaded in his personal capacity by his name in a suit, no decree holder can seek to execute the decree against him personally.

WEB COPY

10. Admittedly, the petitioner, who is the son of the second respondent/defendant, is not a party to the suit in O.S.No.83 of 2005. The decree holder has submitted before the Executing Court that the decree for permanent injunction has been obtained to prevent the defendant, her family members, servants, agents and men from interfering with the plaintiff's possession and enjoyment of the suit property and hence that would bind the petitioner/contemnor also who is the son of the defendant.

11. If a decree passed in favour of the 1st respondent// plaintiff could bind only the 2nd respondent/defendant and not her family members, men or whoever joined with her while causing disturbance to the plaintiff's possession of the property, it will result in a situation where the plaintiff has to file multiple suits, if the persons of the ***defendant** disobeys the decree. At the same time, if a decree of injunction is considered as an executable or enforceable one against persons of the ***defendant** even if they were not parties to the suit by name, it will also lead to a calamitous situation where the decree holder would get orders of arrest against many persons on the allegations that they were the persons of the ***defendant** and they had violated the decree. So it has to be seen where the balance lies in order to reconcile these two extreme situations.

12. During that expedition, it is worthwhile to look into the provisions of Order 21 Rule 32 (1) CPC:

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

13. The phrase "has had an opportunity of obeying the decree and has wilfully failed to obey it" seems to have the marker where the balance between the above mentioned two inconsistent



situations starts. The defendant against whom the decree for injunction is passed has always two options. Either to accept the decree or to challenge it on appeal. In case it is an ex parte decree, then it is open to the defendant either to accept the decree or to take steps to set aside the same and then contest the suit. In the event of accepting the decree or the decree became unchallengeable due to its finality, the defendant has no other option except to obey the decree. So the opportunity to obey the decree is always available to the defendant if he has the knowledge about the decree and he has the Will to abide by it.

14. Even when the defendant obeys the decree, there may be occasions where his associates like family members and other closely related persons, with or without the knowledge of the decree but with the spirit of supporting the defendant, might try to cause disturbance to the plaintiff and go contrary to the terms of the decree. In that event, the decree holder/plaintiff has got no other option except to file execution petition for getting appropriate orders for detaining the contemnor in civil prison and enforce the decree. During that course it is not open to the plaintiff to seek orders of arrest and detention against the persons of the ***defendant**, though the decree would bind them indirectly (as how it was sought from the court). Since the defendant against whom the decree was passed has got control over his persons, he can use his wisdom and prevail on his persons who disobey the decree and prevent them from doing so. Thereby he can opt to retain the opportunity to obey the decree within his hands.

15. If the defendant fails to advise his persons and allow them to disrupt the terms of decree and cause disharmony, then he runs the risk of getting a warrant for arrest from the Executing Court. It is because of the fact that he had voluntarily chosen to lose the opportunity to obey the decree. If the principal person against whose name the decree was passed and in support of whom his persons caused the disturbance, if arrested or sent to prison, that would automatically deter his persons and they would stop from causing disturbance to the plaintiff. In this way the decree could very much bind the persons of the defendant also even though it is not enforceable against them personally. It is somewhat similar to the vicarious liability of the master for the torts of his servants. So the retaining of the opportunity to obey the decree at the hands of the defendant or an opportunity given to him to exercise such an option alone can balance the above said two extreme situations, where a decree for injunction lacks enforceability on some persons despite it has an indirect binding on them.

16. Supposing if any person continues to cause disturbance



unmindful of the arrest and detention of the defendant, it should be because he has a different claim on the subject matter. As against him, the plaintiff would get a new cause of action and a new suit can be filed by impleading him as a party by his name. Since the plaintiff who files the suit for injunction can know those persons who had actively assisted the defendant to cause disturbance to him and he is the domitus litis, he has to choose his defendants and implead them as parties to the suit in order to avoid the risk of non-enforceability of the decree against some key persons for want of eo nomine.

17. In the Execution Petition in which the impugned order is passed, the first respondent decree holder has not opted to implead the defendant and he has impleaded this petitioner alone as a party to the execution proceedings. Unless the defendant is added as a party and a notice is sent to him, it cannot be known whether the alleged disturbance was actually unleashed by her thorough the petitioner or whether the petitioner has a different claim on the subject matter.

18. At any cost, no order for arrest can be passed against this petitioner who is not a party to the suit by his name. It has been already pointed out that the Supreme court and the Full Bench of this Court have held in the cases cited supra that the grip of Order 21 Rule 32 cannot be brought against a person who is not a party to the suit. The said principle is applicable to the facts of this case. Since the Executing Court has passed the impugned order of arrest against the petitioner, who is not an eo nomine party the suit, the same is liable to be set aside.

For the foregoing reasons, the Civil Revision Petition stands allowed and the order dated 02.04.2016 in E.P.No.54 of 2006 in **O.S.No.83 of 2005** passed by the District Munsif, Udthagamandalam, Nilgiris, is hereby set aside. No costs.

Sd/-

Assistant Registrar(CS IX)

Dated: 10/08/2021

*** Corrected as per order of
this Court dated 14/09/2021**

Sd/- Deputy Registrar(CS)

Dated: 15/09/2021

//True Copy//

Sub Assistant Registrar

Suk



To

**(*) To be Substituted to the order already
despatched on 27/08/2021**

WEB COPY

1. The District Munsif, Udhagamandalam,
Nilgiris.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

C.R.P.No.1904 of 2016

LN(CO)
CS/16/08/2021
GN(15/09/2021)