

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2415 of 2018
and CMP.No.14869 of 2018

1.Pazhani
2.Devendiran
3.Kalaivanan

..Petitioners

Vs.

1.Manoharan
2.The President,
Sethiyathope Town Panchayat,
Sethiyathope,
Cuddalore District
3.The Executive Officer,
Sethiyathope Town Panchayat,
Sethiyathope,
Cuddalore District

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC to strike of the proceeding in EP.No.207 of 2008 on the file of the Principal District Munsif Court, Chidambaram.

For Petitioners : Mr.P.R.Thiruneelakandan

For Respondents

For R1 : Mr.A.Muthukumar

For R2 & 3 : Dr.S.Suriya,
Government Advocate(CS)

ORDER

This Civil Revision Petition is filed to strike of the

proceeding in EP.No.207 of 2008 on the file of the Principal District Munsif Court, Chidambaram.

2. The petitioners are the defendants 3 to 5 and the first respondent is the plaintiff. The first respondent filed suit for declaration and permanent injunction in respect of the suit property. The said suit was decreed by the judgment and decree dated 29.02.2008. In pursuant to the decree, the first respondent filed execution petition in EP.No.207 of 2008 for the reason that the petitioners were disturbing the possession and enjoyment of the suit property by the first respondent herein and also sought for civil arrest as against the petitioners herein. After filing numerous petitions, order of arrest became final and finally, the petitioners filed petition to close the execution proceedings in EP.No.207 of 2008 and recall the order of arrest, if any, issued as against the petitioners. The said application was returned by the court below. At that juncture, the present civil revision petition has been filed to strike off the entire proceedings in EP.No.207 of 2008.

3. The learned counsel for the petitioners would submit that the petitioners are the defendants 3 to 5 herein in the suit filed by the first respondent for declaration and permanent injunction. They were

set exparte before the trial court and exparte decree was passed. On the strength of the exparte decree, execution petition was filed and encroached public street and put up some construction. Therefore, the other residents of the street filed writ petition before this Court and the first respondent was directed to remove the construction put up in the street. In fact, the revenue authorities also found that the first respondent obtained fraudulent document and subsequently encroached public property. Therefore, the FMB sketch produced by the first respondent was also cancelled. At that juncture, the first respondent insisted the execution court for order of arrest as if the petitioners are disturbing the possession and enjoyment of the first respondent in respect of the suit property. Therefore, the entire execution proceedings is liable to be struck of.

4. Per contra, the learned counsel for the first respondent submitted that the first respondent filed suit for declaration and permanent injunction in respect of the suit property and the same was decreed by the judgment and decree dated 29.02.2008. Thereafter, the petitioner keep on making disturbance to the possession and enjoyment of the property. As such the first respondent was constrained to filed execution petition in EP.No.207 of 2008. In the meantime, the petitioners set up other persons and filed suit in

OS.No.180 of 2011 for declaration declaring that the suit property is public street and also for declaration declaring that the judgment and decree passed in OS.No.426 of 1999 obtained by fraud by the first respondent and also for mandatory injunction.

4.1 Thereafter, the petitioners filed EA.No.201 of 2015 for stay of all execution proceedings till the pendency of the suit in OS.No.180 of 2011 and the same was dismissed. Aggrieved by the same, the petitioners preferred civil revision petition before this Court in CRP.No.2091 of 2016 and the same was also dismissed. In fact, before the execution court, the first respondent examined two witnesses as PW1 and PW2 and the petitioners also examined RW1 in the execution proceedings. After due contest, the execution petition was allowed by order dated 03.08.2016 and ordered arrest against the petitioners herein. The petitioners filed EA.No.235 of 2016 to set aside the order of arrest, EA.No.236 of 2016 to recall the order of arrest, EA.No.232 of 2016 to stay of the arrest and EA.No.233 of 2016 to receive additional documents in execution petitions. All the applications were dismissed by the Execution Court by order dated 10.04.2017. Aggrieved by the same, the petitioners also preferred appeal with condone delay petitions in IA.Nos.109 to 112 of 2018. On 10.04.2017, all the petitions were dismissed by the appellate court. They did not prefer

any appeal as against the dismissal of the condone delay petitions. Thereafter order of arrest became final and the first respondent was directed to file bata to execute the order of arrest on 04.04.2018. At that juncture, again the petitioners filed another EA to close the execution petition and also recall the order of arrest, if any, issued against the petitioners. Therefore, the Execution Court rightly returned the same. Thereafter the present civil revision petition is filed.

5. Heard, P.R.Thiruneelakandan, the learned counsel for the petitioners and Mr.A.Muthukumar, the learned counsel for the first respondent, Dr.S.Suriya, Government Advocate(CS) appearing for the respondents 2 and 3.

6. The petitioners are the defendants 3 to 5 herein in the suit filed by the first respondent for declaration and permanent injunction in respect of the suit property. The suit was decreed. In pursuant to the said decree, the first respondent filed execution petition for arrest. While pending the execution petition, five persons located in the same locality filed another suit in OS.No.180 of 2011 declaring that the portion of the suit property in the present suit is road and also declaring that the decree obtained by the first respondent in OS.No.426 of 1998 by fraud with mandatory injunction to remove the

encroachment made in the suit property. In pursuant to the said suit, the petitioners filed EA.No.201 of 2015 to stay all further proceedings in the execution petition till the disposal of the suit in OS.No.180 of 2011 on the file of the Principal District Munsif Court, Chidambaram and the same was dismissed by order dated 14.08.2015. Aggrieved by the same, the petitioners filed civil revision petition before this Court in 2091 of 2016 and the same was also dismissed by this Court by order dated 22.07.2016. In fact, before the execution court, the first respondent examined two witnesses as PW1 and PW2 and the petitioners also examined RW1 in the execution proceedings. After due contest, the execution petition was allowed by order dated 03.08.2016 and ordered arrest against the petitioners herein.

7. The petitioners filed EA.No.235 of 2016 to set aside the order of arrest, EA.No.236 of 2016 to recall the order of arrest, EA.No.232 of 2016 to stay of the arrest and EA.No.233 of 2016 to receive additional documents in execution petitions. All the applications were dismissed by the Execution Court by order dated 10.04.2017. Aggrieved by the same, the petitioners also preferred appeal with condone delay petitions in IA.Nos.109 to 112 of 2018. On 10.04.2017, all the petitions were dismissed by the appellate court. At that juncture, the petitioners once again filed EA to recall the order of

arrest and close the EP in EP.No.207 of 2008 and the same was returned by the court below. While being so, the present civil revision petition has been filed to strike of the proceedings in EP.No.207 of 2008 on the file of the Principal District Munsif Court, Chidambaram.

8. The present civil revision petition has been filed suppressing the above all facts and orders. Therefore, this Court finds no merits in the present civil revision petition and it is liable to be dismissed. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

21.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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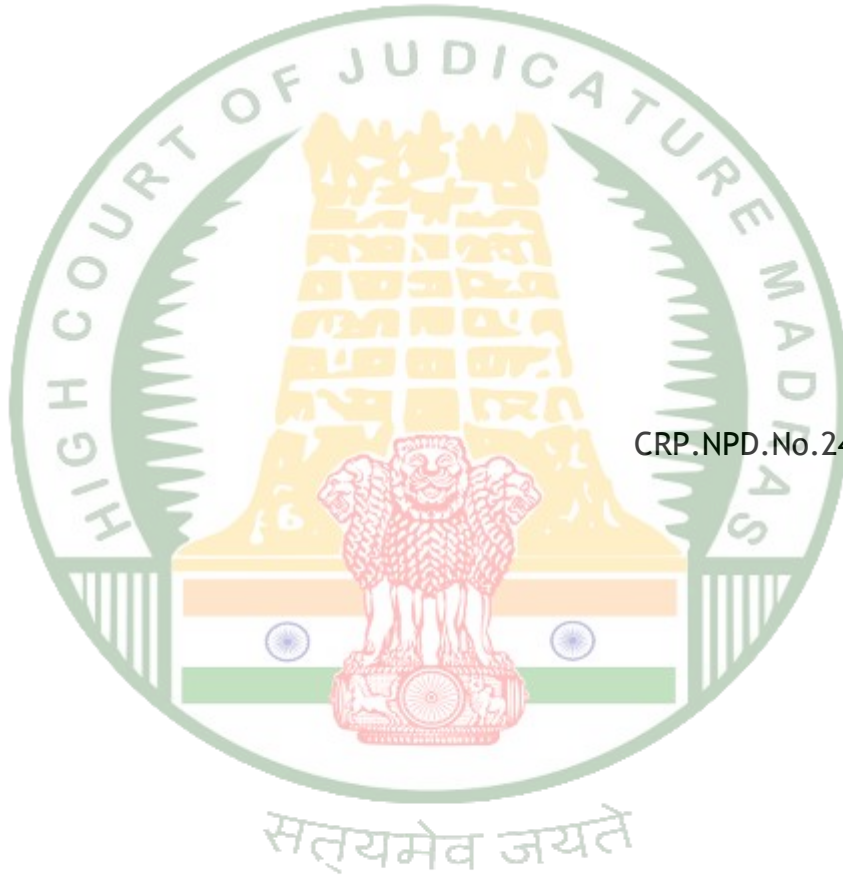
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G.K.ILANTHIRAIYAN,J.

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To

The Principal District Munsif Court,
Chidambaram



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