

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

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

CRP.NPD.No.1390 of 2014

and

MP.No.1 of 2014

1.K.Venkatappa

2.K.Ramiah

3.K.Venkataraj

..Petitioners

Vs.

1.Venkataramiah

2.Muniappa

3.Srinivasan

4.Chinnaiah

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order dated 21.03.2014 made in REP.No.7 of 2013 in OS.No.90 of 2005 on the file of the District Munsif Court, Denkanikottai, Hosur Taluk, Krishnagiri District.

For Petitioners

: Mr.Krishna Bhagavat
for Mr.P.Subba Reddy

For Respondents

For R1

:Mr.P.Mani

R2 to 4

: notice served

ORDER

This civil revision petition is directed as against the order dated 21.03.2014 made in REP.No.7 of 2013 in OS.No.90 of 2005 on the file of the District Munsif Court, Denkanikotta, Hosur Taluk, Krishnagiri District thereby ordered civil arrest of the petitioners herein.

2. The suit was filed for declaration and injunction in respect of the suit schedule property as against the respondents 2 to 4 herein. The said suit was dismissed and aggrieved by the same, the first respondent filed appeal suit in AS.No.28 of 2008 on the file of the Subordinate Court, Hosur and the same was allowed. Thereafter, the first respondent filed execution petition in REP.No.7 of 2013 and prayed for civil arrest as against the respondents 2 to 4 and also the petitioners herein. Though the petitioners filed their counter and thereafter they were set exparte and the execution court passed order of civil arrest as against all the respondents.

3. The learned counsel for the petitioners would submit that they are the absolute owners of the suit schedule property. While being so, without impleading the petitioners as parties, the first respondent filed suit for declaration and injunction in respect of the suit property only as

against the respondents 2 to 4 herein. It was dismissed and reversed by the first appellate court. In pursuant to the judgment and decree, the first respondent filed execution petition and prayed for civil arrest. In the execution petition, the petitioners were impleaded as respondents 4 to 6. When there is no decree as against the petitioners, simply filed execution petition for civil arrest. Though the petitioners filed counter they were set exparte and ordered civil arrest as against the petitioners. In fact, even before filing execution petition, the petitioners filed suit for declaration in respect of the very same property in OS.No.95 of 2010 on the file of the District Munsif Court, Denkanikottai and it is pending for trial as against the first respondent herein. Originally the suit property was purchased by the first petitioner's father. In fact patta was also issued in his favour and even till today they are paying kist for the suit schedule property and proved their possession and enjoyment of the same. While being so, the execution court mechanically ordered arrest as against the petitioners.

4. On perusal of the records, the first respondent filed suit for declaration and injunction in OS.No.90 of 2005 on the file of the District Munsif Court, Denkanikottai as against the respondents 2 to 4 herein. Admittedly, the petitioners were not parties to the said suit. The said suit

was dismissed. Aggrieved by the same, the first respondent filed appeal suit in AS.No.28 of 2008 and the same was allowed and their suit was decreed by the judgment and decree dated 08.07.2008. Thereafter they disturbed the possession and enjoyment of the petitioners in respect of the suit property. As such the petitioners were constrained to file suit for declaration in OS.No.95 of 2010 in respect of the very same property.

5. Thereafter, in the year 2013, the first respondent filed execution petition in REP.No.7 of 2013 as against the respondents 2 to 4 and also against the petitioners herein and sought for civil arrest for violating the order passed in AS.No.28 of 2008. Though the petitioners filed counter and thereafter they were set exparte and ordered civil arrest. Admittedly, the petitioners are not party to the suit filed by the first respondent herein. In fact they also filed suit for declaration in OS.No.95 of 2010 and it is pending for trial on the file of the District Munsif Court, Denkanikottai. When it being so, the execution court ought not to have ordered for civil arrest, since the suit filed by the petitioners against the first respondent is still pending on the very same court and they categorically stated that they are in possession and enjoyment of the suit property and also they produced patta and kist receipt in respect of the suit schedule property.

6. In view of the above discussion, the order passed by the court below is perverse, illegal and liable to be set aside. Accordingly, this civil revision petition is allowed and the order dated 21.03.2014 made in REP.No.7 of 2013 in OS.No.90 of 2005 on the file of the District Munsif Court, Denkanikottai, Hosur Taluk, Krishnagiri District is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

02.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif Court, Denkanikottai,
Hosur Taluk, Krishnagiri District.



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