



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	29.10.2021
DELIVERED ON	23.11.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(MD)No.1488 of 2021
and
C.M.P. (MD)No.8247 of 2021

V.Vinu ...Petitioner/Petitioner/Respondent/
Plaintiff

Vs.

D.Chandrasekhar ...Respondent/Respondent/Petitioner/
Defendant

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order, dated 26.072021 passed in E.A.No.9 of 2020 in E.P.No.18 of 2020 in O.S.No.121 of 2019 on the file of the Principal District Munsif Court, Padmanabhapuram, by allowing this Civil Revision Petition.

For Petitioner : Mr.Vashik Ali, for
Mr.D.Nallathambi
For Respondent : Mr.N.Dilipkumar

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 26.072021 in E.A.No.9 of 2020 in E.P.No.18 of 2020 in O.S.No.121 of 2019, passed by the learned Principal District Munsif, Padmanabhapuram.

2.The revision petitioner/plaintiff has filed a suit in O.S.No.121 of 2019 on the file of the Principal District Munsif Court, Padmanabhapuram, for a relief of permanent injunction and the same was dismissed on 20.12.2019. Thereafter, the respondent herein/defendant/decreet holder has filed a petition in E.P.No.18 of 2020 in O.S.No.121 of 2019, seeking attachment of movable property for arrear of rent. In the meantime, the revision petitioner/plaintiff has filed an application in E.A.No.9 of 2020 and the same was dismissed on 26.07.2021 Aggrieved over the same, the revision petitioner/Plaintiff is before this Court.



3. Heard Mr. Vashik Ali, for Mr. D. Nallathambi, learned counsel appearing for the petitioner and Mr. N. Dilipkumar, learned counsel appearing for the respondent. Perused the material documents available on record.

4. The learned counsel appearing for the revision petitioner submitted that this Civil Revision Petition is liable to be allowed.

5. The revision petitioner/Plaintiff has filed a suit in O.S.No.121 of 2019 for permanent injunction restraining the defendant from evicting the plaintiff from the suit properties except under due process of law.

6. The suit in O.S.No.121 of 2019 was dismissed on 20.12.2019 with a direction that the plaintiff is permitted to hold the suit properties as a tenant till October 2020 and to vacate himself by the end of October 2020 and also till such period the plaintiff is directed to deposit Rs.12,000/-p.m.

7. The paragraph Nos.4 & 5 of decree in O.S.No.121 of 2019 is extracted hereunder:

"4. The plaintiff is directed to deposit the arrears of rent from the date of filing of the suit till this day within one month without fail;

5. On failure of compliance of clause (iii), the plaintiff is not entitled to claim any benefit of holding the property as provided under clause (ii);
"

8. The revision petitioner/plaintiff has not vacated the property within the time limit mentioned in the Judgment and also not paid any arrear of rent. So, the respondent herein/defendant has filed a petition in E.P.No.18 of 2020 in O.S.No.121 of 2019 for attachment of moveables for arrears of rent.

9. In the aforesaid execution petition in E.P.No.18 of 2020 in O.S.No.121 of 2019, the revision petitioner/plaintiff has filed an application in E.A.No.9 of 2020 to pass an order of enquiry for the offences committed by the respondent/decreed holder and his learned Counsel under Section 195(1)(b) of Cr.P.C. The averments in E.A.No.9 of 2020 is as follows:

.....

"5. While the Nationwide lock down is in force and the respondent is abroad, the Execution petition in E.P.No.18 of 2020 has been filed in the name of the defendant/decreed holder/respondent on 30.09.2020 as if he was in India and the local jurisdiction of this Court and made a declaration in the form of affidavit before the Court for attachment and sale of the moveables listed



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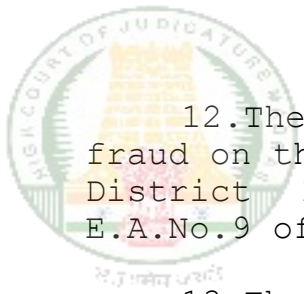
separately in the execution petition.

7.The signature found on all the said affidavits of the respondent/defendant/decreed holder are not the signature of the respondent/decreed holder. There is no possibility or probability of the decreed holder/respondent to swear in the affidavits, filed by his counsel on record before the Court. The signature of the decreed holder/respondent is forged, fabricated with the blessing of the counsel on record and the decreed holder/respondent/defendant in his absence in India."

9.Benefit of the decree cannot be allowed to be enjoyed by any fictitious person. Now the executants of the affidavit in the above suit by filing the above execution applications not only played fraud with the judgment-debtor, the petitioner; but with the majesty of the Honourable Court. The declarant of the said Execution applications are liable to be penalized".

10.The E.A.No.9 of 2020 in E.P.No.18 of 2020 in O.S.No.121 of 2019 was dismissed on 26.07.2021 by the learned Principal District Munsif, Padmanabhapuram. Aggrieved by the order, the instant Civil Revision Petition is filed.

11.The person whose signature was alleged to be forged only can prefer a complaint. The respondent herein has stated that he returned to India from Bahrain dated 17.03.2020 to file E.P. Petition in O.S.No.121 of 2019. It is stated that since lock down was implemented on 25.04.2020 in India he has continued to stay in India. It is stated that E.P. Petition filed earlier was returned for want of details of the property to be attached. It is further stated by the 1st respondent that on verification it is seen that the property of the petitioner was mortgaged and the 1st respondent was in India during 17.03.2020 to 11.05.2020. It is further stated that before leaving to Bahrain he signed in E.A.No.1 of 2020 in presence of the 2nd respondent. The party No.3 is holding an office adjacent to office of the 2nd respondent and he has sworn the signature of the 1st respondent. It is further stated that due to procedural wrangle and lock down the petition which the 1st respondent signed on 10.05.2020 was filed on 07.10.2020. It is further stated that only as per record the signature of the advocate is affixed as 07.09.2020. The petitioner stated that he has no intention to defraud the Court. Further, it is stated that the 1st respondent returned to India on 28.10.2020 and signed in the affidavits of E.A.No.3 to 6 of 2020 on 29.10.2020. It is further stated that in E.A.No.3 to 6 of 2020 has no violation as it was properly signed.



12.The Court cannot presume that the respondent has committed fraud on the basis of wrong dates. Therefore, the learned Principal District Munsif, Padmanabhapuram, has rightly dismissed the E.A.No.9 of 2020 in E.P.No.18 of 2020 in O.S.No.121 of 2019.

13.The revision petitioner only to drag on the proceedings in E.P. No.18 of 2020 and also delay of delivery as ordered by the Court below in O.S.No.121 of 2019, filed the E.A.No.9 of 2020 and also this Civil Revision Petition.

14. Hence, this Court has no valid reason to interfere with the order passed by the Court below.

15.Finally, this Civil Revision Petition is dismissed with an exemplary Costs of Rs.10,000/-[Rupees Ten Thousand Only] to the respondent/defendant. The revision petitioner/plaintiff is directed to vacate the properties and handed over to the same to the respondent/defendant, within a month, from the date of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal District Munsif Court,
Padmanabhapuram.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.N. DILIP KUMAR, Advocate (SR-35744[F] dated 24/11/2021)

C.R.P (MD) No.1488 of 2021

23.11.2021

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