



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Delivered on: 23.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.R.P.(MD)No.623 of 2017

and

C.M.P.(MD)No.2870 of 2017

1.Parimala

2.Dharmalingam

... Petitioners

Vs.

Devadoss @ Maridoss

... Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to allow the civil revision petition and to set aside the order dated 15.12.2016, made in E.A.No.8 of 2015 in E.P.No.46 of 2005 in O.S.No.20 of 2000 on the file of the District Munsif Court, Musiri.

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.K.Kumaravel

For Respondent : Mr.T.Lenin Kumar

ORDER

This Civil Revision Petition is filed against the order, dated 15.12.2016, made in E.A.No.8 of 2015 in E.P.No.46 of 2005 in O.S.No.20 of 2000 on the file of the District Munsif Court, Musiri.

2.The revision petitioners herein are the petitioners and the respondent herein is the respondent in E.A.No.8 of 2015.

3.Brief substance of the petition in E.A.No.8 of 2015, is as follows:

The petitioners are the defendants and the respondent is the plaintiff in the original suit. The petitioners were residing on the southern side of the suit property. On 16.04.2004, the Tahsildar, Musiri, has issued patta in the name of the petitioners and on 09.07.2005, building plan was approved and the petitioners constructed a house and are residing in that house and are paying the necessary Taxes. The respondent has filed a petition in E.P.No.46 of 2005, under Order 39 Rule 2(a) of the Code of Civil Procedure. The original suit was already disposed of by the Court and the petition under Order 39, Rule 2 (a) of C.P.C. is not maintainable and the respondent can proceed only under Order 21 Rule 32 of C.P.C. and prayed the Petition to be dismissed.

4.Brief substance of the counter in E.A.No.8 of 2015, is as



follows:

The suit was decreed on 06.09.2002 and the petitioners have not filed any appeal against the decree and judgment. The petitioners were parties to the suit and they have no right to file a petition under Section 47 of C.P.C. The remedy available to the petitioners is to file an Appeal. Only with an intention to delay the Execution Proceedings, the petitioners have approached this Court, after a lapse of ten years.

5.After hearing both sides, the trial Court dismissed the petition. Against the same, the petitioners have approached this Court by way of this Civil Revision Petition.

6.On the side of the revision petitioners, it is stated that the Execution Court failed to exercise its discretionary jurisdiction. Violation of a permanent injunction order can be questioned only in an Execution Proceedings and not in a Contempt Proceedings. Decision of the Execution Court is against the findings of the Hon'ble Supreme Court reported in **2012 (4) SCC 307 [Kanwar Singh Saini Vs. High Court of Delhi]**.

7.On the side of the revision petitioners, it is further stated that the contempt jurisdiction under Order 39 Rule 2(a) of C.P.C cannot be invoked for enforcement of a civil suit decree. A judgment of the Hon'ble Supreme Court reported in **AIR 2009 SC 2330 [Food Corporation of India Vs. Sukh Prasad]** is cited.

8.On the side of the revision petitioners, it is stated that execution of an injunction decree is to be made in pursuance of Order 21 Rule 32 of C.P.C. In this regard, the learned counsel for the revision petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in **AIR 1972 SC 1826 [Hungerford Investment Trust Ltd Vs. Haridas Mundhra and Others]**.

9.On the side of the revision petitioners, it is stated that boundaries are clearly defined and the petitioners are residing in their house. There is no question of contempt. The Trial Court has dismissed the petition only on the ground that the petitioners have raised the same points in the counter filed by them in the E.P. Petition. Order 39 Rule 2(a) of C.P.C. is applicable only for an interim order of injunction, not on the basis of a decree. As there is no contempt, the Execution Petition has to be struck off.

10.On the side of the respondent, it is stated that the respondent is the plaintiff and he obtained a decree in his favour. Even in the first paragraph of the Execution Petition, it was stated that the petition was filed under Order 21 Rule 32 of C.P.C. and the provision of law was later modified and that the petition was filed under Section 39 Rule 2(a) C.P.C. Section 47 of C.P.C. is not applicable to the present petition.



11.The petitioners are parties to the suit and they are also the parties in the Execution Proceedings. Only a third party, who claims a right to the suit property, can file a claim petition under Section 47 of C.P.C. Wrong quoting of the Section will not reduce the value of the proceedings and the same points can be raised in the main petition. Only in the third Petition, the Section was wrongly stated, subsequently, it was rectified and prayed the revision is to be dismissed.

12.The revision petitioners were the defendants in the suit. The suit was decreed against the revision petitioners. No appeal was filed against the decree. The respondent / plaintiff filed an Execution Petition. The revision petitioners / defendants have filed a counter in the said petition. In the meanwhile, the revision petitioners filed a petition, stating that contempt proceedings under Order 39 Rule 2(a) of C.P.C cannot be taken on the basis of a decree. The contention of the respondent is that the Section was subsequently altered and the petition is pending only under Order 21 Rule 32 of C.P.C. It is seen that the revision petitioners have already raised all this points in the counter filed by them in the Execution Petition.

13.Since the Section was subsequently altered and the same points were already raised in the counter, the points raised by the revision petitioners can be decided in the main Execution Proceedings. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

1.The District Munsif, Musiri.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-26999[F] dated 23/08/2021)

C.R.P(MD)No.623 of 2017

23.08.2021

_RD(1.09.2021) 3P 5C

<https://hcservices.ecourts.gov.in/hcservices/>