



C.R.P.(PD).No.1931 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.1931 of 2021

and

C.M.P.No.15016 of 2021

1.Lakshmi Ammal

... Petitioner/1st Respondent

-V-

1.Nalina Ammal

2.Kalyankumar

... 1 to 2 Respondents/Petitioners

3.The Inspector of Police
Vikravandi PS
Vikravandi.

... 3rd Respondent/2nd Respondent



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Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 09.03.2021 passes in E.A.No.20 of 2020 in O.S.No.230 of 1991 on the file of District Munsif-Cum-Judicial Magistrate, Vikravandi and dismiss the same.

For Petitioner : Mr.K.Elango
For Respondents : Mr.N.Suresh [R.1 & R2]
Mr.D.Gopal [R3]

ORDER

This C.R.P.No.1931 of 2021 is filed by the Judgement Debtor challenging the order passed in E.A.No.20 of 2020 in O.S.No.230 of 1991. The said application has been filed under Section 151 of the C.P.C. seeking necessary police aid to the petitioner to implement the decree for permanent injunction which had been confirmed right upto the Hon'ble Supreme Court. The facts, in brief, are as follows:



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2. The respondents 1 and 2 had filed a suit O.S.No.230 of 1991 on the file of the District Munsif, Villupuram for a bare injunction against the revision petitioner herein and four others for a declaration of the plaintiffs' title to the suit property and for a consequential permanent injunction. This suit was decreed with reference to the 1st item of the suit schedule alone.

3. The plaintiffs had filed A.S.No.307 of 1994 on the file of the District Court Villupuram and the said appeal was allowed as a result of which the plaintiffs' title to both the suit items of property was declared and the injunction was also granted. This was challenged by the revision petitioner herein and her husband who were the 2nd and 3rd defendants in the suit in Second Appeal No.1107 of 1995. The said appeal was dismissed by judgement and decree dated 23.04.2007.



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4. This order was taken up on challenge to the Hon'ble Supreme Court and by an order dated 23.04.2007 in SLP No.23245 of 2008, the SLP was dismissed, as a result, the defendant's right to the property and title to the property and his right of possession and enjoyment was confirmed.

5. The 1st and 2nd respondent had filed execution proceedings in E.A.No.20 of 2020 invoking the provisions of Section 151 of the Code of Civil Procedure. The said application was allowed by order dated 09.03.2021. This order is challenged by the revision petitioner herein stating that the decree for injunction can only be executed by filing an application under the provisions of Order 21 Rule 32 of the C.P.C. and the invocation of Section 151 of the C.P.C. was totally unheard to the settled procedures. Therefore, the only point for consideration before this Court is whether the decretal order would directly take out an execution



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application under Section 151 of the C.P.C. for executing a decree for injunction.

6. Mr.N.Suresh appearing for the respondents/deGREE holders produced the judgment of the Hon'ble Supreme Court reported in **CDJ 2017 SC 1517 - Raja Venkateswarlu & Another Versus Mada Venkata Subbaiah & Another**, where the similar issue arising from the High Court of Andhara Pradesh had come up for consideration. The learned judge has held as follows:

"We find it difficult to appreciate the stand taken by the High Court. The decree for permanent injunction having become final, the decree holder approached the Execution Court by way of application for execution (E.A. No. 64/2011 in O.S. No. 26/2001 before the Junior Civil Judge, Badvel). No doubt, Order 21 Rule 32 provides for execution of a decree for injunction



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and more specifically under sub-rule (5) which reads :-

"(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree"

4. But merely because an application for police protection was filed only under section 151 CPC invoking the inherent jurisdiction, it cannot be a reason for the High Court to reject it and hold that the application should have been filed under Order 21, Rule 32 CPC. The crucial question is whether the Execution Court has



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jurisdiction. That is not disputed. The only thing is that an exact provision was not invoked. That by itself shall not be a reason for rejecting the application (See Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal, (1983) 2 SCC 422, and T. Nagappa v. Y.R. Muralidhar, 2008(3) R.C.R.(Criminal) 926: 2008(4) Recent Apex Judgments (R.A.J.) 592 : (2008) 5 SCC 633). In case, the Execution Court has the jurisdiction and has otherwise followed the procedure under the Rules the action has to be upheld.

7. In the light of the above Judgement the challenge by the revision petitioner is not sustainable and accordingly, C.R.P.No.1931 of 2021 filed by the revision petitioner is not maintainable and accordingly the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil



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Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

1.The District Munsif-Cum-Judicial Magistrate,
Vikravandi.

P.T. ASHA, J,
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