



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2022

Pronounced on : 11.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD) No.114 of 2017

Krishnan

...Decree Holder / Plaintiff / Petitioner

Vs.

1.Natesan

2.Govindaraj

...Judgment Debtors/Defendants/Respondents

Prayer:- This petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order in E.P.No.39 of 2012 in O.S.No.617 of 1994 dated 25.04.2016 passed by the learned Principal District Munsif, Tindivanam.

For Petitioner : Mr.N.Suresh



ORDER

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This Civil Revision Petition has been filed questioning the order of the learned Principal District Munsif, Tindivanam dated 25.04.2016 in E.P.No.39 of 2012 in O.S.No.617 of 1994 filed by the petitioner / plaintiff.

2. The petitioner herein had filed O.S.No.617 of 1994 against five defendants seeking a judgment and decree for declaration of title and permanent injunction restraining the defendants therein from interfering with peaceful possession with respect to vacant land measuring 0.7 cent in Punjai S.No.35/7B in Singananthal Village, Marakanam, Tindivanam District. There were five defendants in the suit. The 1st defendant alone entered appearance through counsel on receipt of summons. The 2nd to 5th defendants remained set ex-parte. A judgment and decree was granted in the said suit on 21.01.1997 in favour of the plaintiff.

3. Thereafter, the plaintiff filed E.P.39 of 2012 under Order XXI Rule 11(2) of the Code of Civil Procedure, 1908 complaining that the 1st, 2nd and 5th defendants had violated the decree granting permanent injunction restraining them from interfering with peaceful possession by



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interfering with such peaceful possession on 10.10.2008, 24.11.2008, 24.12.2008, 10.01.2009 and again on 17.04.2012 and therefore, they should be directed to pay costs of Rs.25,000/- as compensation, and on failure to do so, be committed to civil prison under Order XXI Rule 32 (1)(3) of CPC. It had been stated in the Execution Petition that these facts were known to Kumar S/o. Eganathan and Jayakumar S/o. Rajagopal. Complaining violation of the decree, the Execution Petition was filed as aforesaid. Though notice was directed, the respondents did not appear and they were set ex-parte. Proof affidavits were filed in support of the averments made in the Execution Petition by the petitioner herein, Krishnan and also by Kumar S/o. Eganathan.

4. On consideration of the averments in the Execution Petition and in the proof affidavit, the learned Principal District Munsif, Tindivanam, was of the opinion that the petitioner herein had not made out a case to proceed against the respondents under Order XXI Rule 32 of CPC. It was also held that the dates of alleged encroachments namely, 10.10.2008, 24.11.2008, 24.12.2008, 10.01.2009 were more than three years prior to the filing of the petition and there was a bar under the Limitation Act, to take note of such encroachments. It was also found that no averments



were made as to how the petitioner was actually affected by such encroachments. The learned Principal District Munsif, Tindivanam, therefore, dismissed the Execution Petition by order dated 25.04.2016.

5. Questioning the reasonings given in the said order, the present Civil Revision Petition has been filed.

6. Even before this Court, the respondents did not appear.

7. Heard arguments advanced by Mr.N.Suresh, learned counsel for the petitioner.

8. Order XXI Rule 32 of CPC, is as follows:-

“32.Decree for specific performance for restitution of conjugal rights, or for an injunction:-

(1)Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution



of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2).....

(3)Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. The Court may, on application, extend the period of three months mentioned herein to such period not exceeding one year on the whole as it may think fit.

(4)Where the judgment-debtor has obeyed the decree and paid all costs of executing it which he is bound to pay, or where, at the end of three months from the date of the attachment or of such extended period which the Court may order under sub-rule (3), no application to have the property sold has been



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made or if made has been refused, the attachment shall cease.

(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.

Explanation.- For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunctions.”

9. The provision provides for enforcement of a decree by detention in civil prison or by attachment of property, if there is wilful refusal to obey a decree of injunction.



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10. In **2011 (2) MWN (Civil) 15, Datchinamoorthy v.**

Ravichandran, the learned Single Judge of this Court had held as follows:

*“16. It is to be noted that Order 21, Rule 32 speaks of the decree for specific performance for restitution of conjugal rights or for an injunction. The Executing Court has to see that before directing execution to issue under Rule 32 of Order 21 of the Code of Civil Procedure is whether an individual bound by the decree has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it. If the party has had the opportunity and has wilfully failed to obey the decree, the Court may order the execution to issue under this rule without providing him any further opportunity, and it is not obligatory upon the Court in such a case to serve a notice upon the party calling upon him to obey the decree or injunction as per the decision in **Durga Das v. Dewraj, 1906 (33) Cal. 306.***

17. That apart, this Court aptly points out that Order 21, Rule 32(1) of the Code of Civil Procedure requires wilful non-compliance and this



*requires deliberate and conscious action. There ought to be, (a) deliberate action or conduct, moulded by an obstinacy to act as per the decision in **SM Kanchanaur v. Dennammadevi Cycle Mart, AIR 1987 Kant. 26**, and (b) consciously disregarding of an injunction against such a conduct as per the decision in **Kariyappa v. Haladappa, AIR 1989 Kant. 163**. Where the disobedience is not wilful, jurisdiction under Order 21, Rule 32 of the Code of Civil Procedure cannot be exercised. The term 'wilful failure' means want of bona fide as per the decision in **Ram Nath v. Tapesara, AIR 1985 All. 26**.*

*18. The issue of taking action under Order 21, Rule 32 of the Code of Civil Procedure can arise only when there is a wilful breach of the injunction and not when there is a mere attempt to violate it as per the decision in **Repayi Jose v. Chacko Lonappan, AIR 1959 Ker. 395**."*

(Emphasis supplied)

11. One salient factor is that there must be sufficient evidence of actual failure and wilful refusal to obey the decree. In the instant case, in the Execution Petition a string of dates have been given. Most of them



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named R1, R2 and R5, who actually violated the decree of permanent injunction and in what manner they had violated the decree. It is also seen that except for R1, other have remained ex-parte in the suit also. The petition is sketchy in nature and I would concur with the views taken by the learned Principal District Munsif, Tindivanan in dismissing the Execution Petition as bereft of material details.

14. With the above observations, the Civil Revision Petition is dismissed. No order as to costs. This would not preclude the petitioner to file any fresh Execution Petition, if there is wilful disobedience of the decree granted.

11.02.2022

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To,

The Principal District Munsif Court, Tindivanam.



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C.V.KARTHIKEYAN, J.,

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Pre-Delivery Order made in
C.R.P (NPD) No.114 of 2017

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