



C.R.P(MD) No.1287 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	19.07.2023
Pronounced on	06.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

**C.R.P.(MD) No.1287 of 2023
and
C.M.P(MD)Nos.6329 and 7385 of 2023**

Late.Marisamy (Died)

1.Murugan

2.Thangam

3.Kalidass

4.Velmurugan

5.Ganeshan

6.Murugan

... Revision Petitioners

Versus

1.Kattupava Jumma Masque and Matharasha,
through its President,
N.Mohammadhu Ibrahim (Died)



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2.M.Mohammadhu Ismayil,
Palivasal North Street,
Kaluneerkulam,
Alangulam Taluk,
Tenkasi District

... Respondents

Prayer : The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 08.04.2023 passed in E.P.No.49 of 2022 in O.S.No.17 of 2001 on the file of the District Munsif Court, Alangulam, Tenkasi.

For Revision Petitioners : Mr.A.B.Jeeva

For Respondents : M/s.H.Jasima Yasmin for
M/s.Ajmal and Associates

ORDER

This Civil Revision Petition is preferred as against the order passed in E.P.No.49 of 2022 in O.S.No.17 of 2001 on the file of the District Munsif Court, Alangulam, Tenkasi, dated 08.04.2023.

2. According to the Revision Petitioners, the execution petition was filed beyond the limitation period and the same was filed without Section 5 application to condone the delay in setting aside the abatement. It is further submitted that the Respondents/Plaintiffs has no *locus standi* to file the execution



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petition since the same has been filed after a lapse of 21 years. It is further submitted that the Respondents/Plaintiffs without adding the police authority as one of the parties in the execution proceedings straight away filed an application for police protection at the time of constructing the compound wall. Hence, the same is liable to be set aside. It is also submitted that the Respondents taking advantage of an order in E.P.No.49 of 2022, trying to construct a compound wall on public pathway. Hence, the same is liable to be set aside.

3. The learned counsel appearing for the Revision Petitioners would submit that the Kattupava Jumma Masque and Matharasha, through its President namely N.Mohammadhu Ibrahim filed a suit in O.S.No.17 of 2001 and obtained an order of permanent injunction on 30.06.2003 against the Revision Petitioners/Defendants not to disturb the compound wall mentioned in schedules 2 and 3 in the plaint. Thereafter, the said N.Mohammadhu Ibrahim died, the second Plaintiff/Respondent filed the execution petition before the District Munsif Court, Alangulam, Tenkasi for initiating contempt proceedings against the Revision Petitioners and also filed an application for police aid at the time of constructing the compound wall.



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4. He would submit that the said execution petition was filed after a lapse of 6835 days and the executing Court without considering the above delay passed an order in E.P.No.49 of 2022 in O.S.No.17 of 2001. While questioning the contempt proceedings against the Revision Petitioners, the Trial Court directed the Inspector of Police, V.K.Pudur Police Station to give police protection to the second Plaintiff/Respondent at the time of constructing the wall for a period of 15 days.

5. Taking advantage of the same, the Plaintiffs/Respondents are trying to construct the compound wall in Survey No.56/1 which is classified as Government Poramboke land. Thousands of families are suffering due to their illegal encroachment in the said Government land. The villagers are carrying out the agricultural work and if the wall is constructed, they will be unable to transport the agricultural produce through their vehicles and other emergency vehicles like ambulance and fire services. It is a narrow pathway located in Survey No.565/1. Due to the illegal encroachment of the Plaintiffs/Respondents, much hardship is caused to common public. Hence, it is necessary to set aside the order passed in E.P.No.49 of 2022 in O.S.No.17 of 2001 on the file of the District



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6. The learned counsel would also submit that even if there is any violation of decree for perceptual injunction, the Plaintiffs/Respondents have to proceed under Order 21 Rule 32 of Code of Civil Procedure but not by way of seeking police protection. It has caused the negation of the right of the judgment debtor available under Order 21 of Code of Civil Procedure and that the executing Court, without setting aside the application filed under Order 21 Rule 32 of Code of Civil Procedure cannot refer the matter to the police for implementation of the decree. To support his contention, he had relied on the judgment of Madurai Bench of Madras High Court made in ***A.Diravidamani Vs.Chitradevi and Others*** case reported in ***2008 SCC OnLine Mad 725***.

7. On the other hand, the learned counsel appearing for the second Respondent herein would submit that the Respondents have filed the suit in O.S.No.17 of 2001 before the Principal District Munsif Court, Tenkasi and the same was decreed on 30.06.2003. An appeal filed after a lapse of 10 years by the Revision Petitioner was also dismissed. Therefore, when the



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Respondents/Plaintiffs have any decree in their favour, it is always open to the Respondents/Plaintiffs to execute the same and approach the executing Court for the said relief. Moreover, it is submitted by the second Respondent/Plaintiff that no such encroachment has been made as alleged by the Revision Petitioners and also filed an affidavit by stating that the first Respondent Kattupava Jumma Masque and Matharasha will not increase the breadth of the wall which is marked as H,C in the Plaint schedule. The second Respondent intend to increase only the height of the wall and will not increase the breadth of the H,C wall. It is also submitted that the said H,C wall is in existence for more than 200 years and the same is not newly constructed as claimed by the Revision Petitioners.

8. It is also submitted that the suit wall is proposed to be increased in height in pursuant to the order made in the execution petition in E.P.No.49 of 2022, dated 08.04.2023. Hence, the Revision petition is devoid of merits and liable to be dismissed.

9. Heard on both sides and perused the records.



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10. Admittedly, the suit in O.S.No.17 of 2001 has been filed by the Respondents/Plaintiffs for permanent injunction in which the judgment and decree was passed in favour of the Respondents/Plaintiffs by the learned Principal District Munsif, Tenkasi. Thereafter, the Respondents/Plaintiffs filed a petition for executing the decree in E.P.No.49 of 2022 in O.S.No.17 of 2001 on the file of the learned District Munsif, Alangulam in which the executing Court has granted police aid for a period of 15 days for the Respondents/Plaintiffs to increase the height of the H,C wall at 3 feet. Aggrieved by this, the Revision Petitioners/Defendants have preferred the present Revision Petition.

11. The second Respondent/Plaintiff had also filed an affidavit by giving an undertaken by stating that only the height of the wall will be increased to the extent of 3 feet and the breadth of the wall will not be increased. It is also submitted that the said H,C wall is in existence for 200 years and the same is not newly constructed as claimed by the Revision Petitioners. Since the Revision Petitioners disobeyed the judgment and decree made in O.S.No.17 of 2001, the Respondents/Plaintiffs were constrained to file the above execution petition for executing the decree passed in their favour and also for police aid to execute the



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decree. Therefore, no infirmity is found in the order passed by the executing Court and in granting police aid to the Respondents/Plaintiffs. The executing Court cannot pass any order against the decree passed in the suit. The executing Court has rightly allowed the Execution Petition and granted police aid.

12. Accordingly, this Civil Revision Petition is dismissed confirming the order passed by the executing Court. No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2023

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Index:Yes/No

Speaking Order : Yes/No

To

The District Munsif Court, Alangulam,
Tenkasi.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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