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C.R.P(NPD)(MD).No.2388 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.2388 of 2017

and

C.M.P(MD)No.11395 of 2017

1.P.Devadasan

2.P.Muthunayagam (Addl.6)

... Revision Petitioners/
defendants

Vs.

1.N.Kunjuraman Nair

2.Kurusumuthu

... Respondents/
Plaintiffs

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair order dated 16.11.2017 made in E.P.No.11 of 2016 in O.S.No.42 of 2004 on the file of the Principal District Munsif, Padmanabhapuram and allow the above Civil Revision Petition.

For Petitioners : Mr.P.Thiyagarajan

For Respondents : Mr.V.Shathurthi Raja



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ORDER

This Civil Revision Petition is filed against the order dated 16.11.2017 passed in E.P.No.11 of 2016 in O.S.No.42 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram.

2. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.42 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram. The respondents as plaintiffs filed the said suit against the petitioners/defendants for declaration of their title and possession over plaint A.Schedule property and for permanent injunction restraining them from entering into A.Schedule property and also for mandatory injunction to restore the B.Schedule property to its original position and for damages. The suit was decreed in favour of the respondent. However, in the Second Appeal the Hon'ble High Court confirmed the decree of declaration and permanent injunction and dismissed the suit in respect of mandatory injunction and damages in respect of B.Schedule property. The petitioner put fencing net to protect the rubber saplings planted in his property. On 11.10.2015 the petitioners along with rowdy elements trespassed into the schedule property in violation and disobedience to the decree of permanent injunction and damaged fencing measuring 500 feet



and 15 feet width worth Rs.25,000/-. The respondent preferred a criminal complaint. The petitioners' act is against the decree of prohibitory, which amounts to contempt of court. Therefore, the respondent filed the petition in E.P.No.11 of 2016 in O.S.No.42 of 2004 to detain the petitioners/defendants in civil prison. The petitioners filed their counter objecting the averments of the respondent. After hearing both, the Executing Court has allowed the petition in E.P.No.11 of 2016 in O.S.No.42 of 2004 on 16.11.2017. Aggrieved by the order of the Executing Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the petitioners has argued that the respondents filed the suit for declaration, permanent injunction in respect of A.Schedule suit property and for mandatory injunction and damage in respect of B.Schedule property. Though the suit was decreed in favour of the respondents, in Second Appeal the Hon'ble High Court partly decreed the suit and the suit was dismissed in respect of B.Schedule property. The B.Schedule property is a public pathway. The



respondents have not established that they formed pathway in the A.Schedule property. The petitioners produced the proceedings of the revenue officials about the formation of disputed pathway. The petitioners have not committed any of the acts alleged by the respondent. The petitioners have not violated the order of the court. The B.Schedule property is common pathway and there is no decree against the said property. Further, the respondent has not furnished details of violation committed by the petitioners. The respondent lodged criminal case against the petitioners and the petitioners were acquitted from the said case after full-fledged trial by the Judicial Magistrate Court concerned. The respondent produced a copy of judgment dated 03.03.2020 passed in C.C.No.46 of 2018 on the file of the Judicial Magistrate Court, Padmanabhapuram. The Executing Court without considering the facts and circumstances of the case allowed the petition for arrest. Therefore, the revision petition may be allowed by setting aside the impugned order. In support of his argument, the learned counsel for the petitioners has relied on the following citations of the Hon'ble Supreme Court and this court.

(1) **1996 (3) SCC 103**, wherein it is held in paragraph No.3 as follows:

“It would appear that it was closed due to the contempt proceedings taken. The



question is whether the decree passed in 1965 is executable under Order 21 Rule 32 CPC, it says where a party against whom a decree for perpetual injunction has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for injunction by his detention in civil prison or by the attachment of his property or by both. Though the appellants are successors in interest, due to the fact that there is an altered situation after the decree was passed and the appellants had constructed a separate wall in their own land and opened the window, the decree earlier passed became unenforceable. Therefore, the execution laid under Order 21 Rule 32 CPC is unenforceable and cannot be executed.”

(2) 2017 0 Supreme(Mad) 1062, wherein it is held in paragraph

No. 5 as follows:

“On perusal of the petition filed before E.P.Court, the revision petitioner without furnishing the details in the affidavit sought to detain the respondents in civil prison for violating the judgment and decree. When there is non-compliance of the decree/Court order, the parties concerned should approach the Court by furnishing details with regard to non-compliance of the decree/order for alleged violation of decree. The allegation found in the petition is vague, there is no specific allegation and no materials placed



before this Court to establish that the respondents had disobeyed the decree. It is specific case of the respondents that the schedule mentioned property had been handed over by the resident welfare association to the Panchayat. Pursuant to the handing over of the above mentioned property, Panchayat laid road and the same is being used by public. The said fact has not been disputed by the petitioner by filing any reply affidavit before the Execution Court.”

5. The learned counsels appearing for the respondents vehemently contended that the Executing Court has correctly discussed the facts of the case and rightly allowed the petition for arrest. The petitioners violated the decree for permanent injunction and trespassed into the A.Schedule property and damaged 500 feet fence and also rubber saplings for which a criminal case was also laid by them. The learned counsel for the respondents has further submitted that the revenue officials have passed proceeding regarding the B.Schedule property as common pathway and hence, the respondents filed a Writ Petition in W.P. (MD)No.5567 of 2018 before this Court wherein this court held that the portion covered by the road also originally belonged to the respondents and the petitioner's land was not acquired by following due process of law and it appeared that in a high handed manner road was laid across the



respondent's land. Thereby, the revenue proceeding forming the property of the respondents as road was set aside. The common pathway is absolutely belonged to the respondents. The petitioners have violated the decree of permanent injunction by trespassing it and hence, the Executing Court has correctly passed the impugned order. Therefore, the petition may be dismissed.

6. On hearing both and on perusal of records, it is clear that the respondents as plaintiffs filed the main suit in O.S.No.42 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram for declaration and permanent injunction in respect of A.Schedule suit property and for mandatory injunction & damages in respect of B.Schedule property. On perusal of materials, it is clear that the B.Schedule property is a pathway. Though the Trial Court has decreed the suit in toto and the same was confirmed by the first Appellate Court, in Second Appeal filed by the petitioners/defendants, this Court has set aside the relief granted in respect of B.Schedule property. The respondent stated that the petitioners/defendants trespassed into his property and damaged his rubber saplings worth Rs.20,000/- by violating the decree of the court. The petitioners state that they have not violated the decree and they used the pathway, which is the public pathway. The respondents



state that they challenged the proceeding forming their property as pathway in W.P.(MD) No.5567 of 2018 before this court and this court passed order on 14.07.2022 setting aside the order of revenue officials. In these circumstances, on the alleged date the path way was remained as public pathway. Further, on perusal of records, it is clear that the respondent has lodged police complaint against the commission of illegal acts of the petitioners. In the said criminal case, both side evidences let in before the concerned Judicial Magistrate Court and the petitioners were acquitted from the said criminal case on 30.03.2021 for alleged events stated in this petition for arrest. The respondent has not denied it.

7. On perusal of affidavit filed along with E.P.No.11 of 2016, the respondents stated that on 11.10.2015 the petitioners trespassed into the decree schedule property and cut and damaged the rubber saplings and also damaged the fencing net and sticks causing loss of Rs.20,000/-. It is held by this court that the respondent has to furnish the details in the affidavit sought to detain the petitioners in civil prison for violating the judgment and decree and when there is non-compliance of the decree/Court order, the parties concerned should approach the Court by furnishing details with regard to non-compliance of the decree/order for alleged violation of decree. If the allegation found in the petition is



vague, there is no specific allegation and no materials placed before this Court to establish that the respondents had disobeyed the decree, the decree holder is not entitled to seek to detain the petitioners in civil prison. On perusal of impugned order of the Executing Court, the respondent has not produced sufficient materials to establish their version, except the complaint lodged before the concerned police. Admittedly, in the said criminal case the petitioners were acquitted as the respondents' case was not proved beyond reasonable doubt. It is also pertinent to note here that at the time of alleged events, the property in dispute was used as public pathway as per revenue proceedings as admitted by the respondent, who challenged it before this court in W.P. (MD) No.5567 of 2018 and the said writ petition was allowed on 14.07.2022. When the facts being so, till disposal of the said writ, the property in question was used as common pathway even as per revenue records. While so, the respondents cannot be said to be trespassers of the common pathway. Further, on perusal of records the respondents have not established their allegation against the petitioners by furnishing details of violation and by producing acceptable materials before the Executing Court. It is pertinent to note here that on perusal of records, the petitioners have filed two separate affidavits dated 24.04.2022 and 26.06.2022 stating that they hereby undertake to obey the decree of



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prohibitory injunction made in O.S.No.42 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram and they shall not interfere with the respondents' peaceful possession and enjoyment of the suit schedule property. Therefore, from the above facts and circumstances and considering the affidavits filed by the revision petitioners, this Court is inclined to allow this Civil Revision Petition.

8. In the result, this Civil Revision Petition is allowed. The fair order dated 16.11.2017 passed in E.P.No.11 of 2016 in O.S.No.42 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram is set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Principal District Munsif,
Padhamanabhapuram.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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