



C.R.P.No.2749 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2024

CORAM

The Hon'ble Mr.Justice N.Sathish Kumar

C.R.P. No.2749 of 2024

E.Siresh Kantharaj

rep. by his Power Agent, Mr.Sathesh Kumar.

... Petitioner

Vs.

1. T.Sanjeev Kumar

2. Sapna Sanjeevkumar

... Respondents

Prayer:-

Civil Revision Petition filed under Section 115 of CPC against the order passed in E.P..No.39 of 2023 in O.S.No.14 of 2013 on the file of the Subordinate Judge, Gudalur, Nilgiris, dated 28.02.2024.

For Petitioner : Mr.T.Thiageswaran for
M/s.Waraon and Sai Rams

For Respondents : Dr.R.Gowri

ORDER

Challenge has been made in this Revision Petition to the order passed by the learned Subordinate Judge, Gudalur, Nilgiris (hereinafter,



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referred to as 'the Trial Court'), in E.P.No.39 of 2023 in O.S.No.14 of 2013
dated 28.02.2024.

2. The brief facts, which led to the filing of this Revision Petition are as follows:-

i) The respondents herein have filed a suit in O.S.No.14 of 2013 for recovery of a sum of Rs.1,08,000/- with interest at 12% p.a. towards licence fee payable by the revision petitioner/defendant. The suit was decreed in favour of the respondents by the Trial Court vide a Judgment and Decree dated 05.06.2013. Thereafter, the respondents/decreed holders filed an Execution Petition in E.P.No.39 of 2023 seeking for attachment and sale of the immovable properties of the revision petitioner/judgment debtor for recovery of the decree amount. The said Execution Petition was allowed vide order dated 28.02.2024. Aggrieved by the said order, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the revision petitioner/judgment debtor would submit that initially, the



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respondents/decreed holders filed a suit in O.S.No.24 of 2010, for recovery of money and permanent injunction; that the Trial Court vide a Judgement and Decree dated 28.07.2010 partly decreed the suit, whereby, relief of recovery of money alone was granted and as regards the prayer for permanent injunction was concerned, the suit was dismissed; that as against the said denial of relief of permanent injunction by the Trial Court, the respondents filed an Appeal in A.S.No.9 of 2011, and the same was also dismissed.

3.1 Therefore, it is the contention of the learned counsel for the revision petitioner that the revision petitioner/judgement debtor is not prevented by any mandatory injunction in using the suit schedule property, as the suit and the Appeal filed by the respondents/decreed holders insofar as it relates to the prayer for injuncting the revision petitioner/judgment debtor from using the staircase, were dismissed by both the Courts below, as such, no amount can be recovered from the revision petitioner/judgement debtor towards damages of the suit property and hence, the suit filed by the respondents in O.S.No.14 of 2013 claiming damages and the consequential



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execution proceedings were not maintainable in the eye of law and is hit by doctrine of *ex turpi causa non oritur action* in terms of Order VII Rule 11 CPC. Thus, by averring so, the learned counsel prayed for allowing this Civil Revision Petition.

4. Per contra, the learned counsel for the respondents/deGREE holders would submit that the suit filed by the respondents in O.S.No.24 of 2010 was for recovery of the license fees, payable by the revision petitioner and for permanent injunction restraining the revision petitioner/defendant, his tenant, from using the staircase; that though the said suit was partly decreed, granting the relief of recovery of of money/licence fees, and negating the relief sought for injunction, as against the said judgment passed by the Trial Court, the respondents preferred an Appeal; that the Lower Appellate Court held that since the Syndicate Bank, Gudalur was a tenant of the respondents, in a portion of the suit schedule property and as Syndicate Bank has an ATM Counter in the revision petitioner's/defendant's property; that the revision petitioner and other Customers of the Bank have the right to use the staircase and as such, the revision petitioner/defendant cannot be restrained



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by way of permanent injunction, unless and until, the Syndicate Bank, Gudalur vacates the tenanted premises, and by holding so, dismissed the Appeal; that thereafter, the Syndicate Bank, Gudalur vacated the tenanted premises on 07.01.2013, thereafter, the revision petitioner and his tenants had made use of the staircase in the suit schedule property even after the revocation of the licence from 01.01.2010 till 07.01.2023, and as such, the revision petitioner is liable to pay a sum of Rs.3,000/-, as damages for the use of the stair case for 36 months, amounting to Rs.1,08,000/- with interest at 12% p.a. from the date of the suit till realisation, and accordingly, suit in O.S.No.14 of 2013 was filed claiming damages and the Trial Court appreciating all the aforesaid aspects, rightly decreed the suit for recovery of damages and that since the revision petitioner/judgement debtor failed to pay the decree amount, Execution Petition was filed and the said Petition was also rightly allowed by the Executing Court vide order dated 28.02.2024, and the same calls for no interference.

5. Heard the learned counsel for both sides and perused the material placed on record.



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6. I am unable to accept the contention of the learned counsel for the revision petitioner/judgment debtor.

6.1 It is no doubt true that, two suits were filed by the respondents/plaintiffs in O.S.No.24 of 2010 and O.S.No.14 of 2013. So far as the initial suit is concerned, the same was filed by the respondents seeking two reliefs, i) recovery of license fees (as the defendant/revision petitioner, who had entered into an agreement of licence with the respondents, in July 2007, to use the staircase of the suit schedule property, failed to pay the licence fees) and ii) permanent injunction restraining the revision petitioner/defendant from using the stair case. The suit was partly decreed, whereby, i) first relief of recovery of licence alone was granted, however ii) the second relief, i.e. restraining the revision petitioner/defendant from using the stair case was concerned, the same was negatived.

6.2 Aggrieved against the dismissal of the suit as regards prayer for injunction, the respondents filed Appeal. The Lower Appellate Court also



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dismissed the Appeal on the ground that, unless and until, the tenant of the respondents/plaintiffs, viz., Syndicate Bank, Gudalur vacates the suit schedule property, the revision petitioner/defendant cannot be injuncted from using the stair case. Thus, as and when the tenant of the respondents, viz., Syndicate Bank, Gudalur, vacated the suit premises, the respondents/plaintiffs filed latter suit, viz., O.S.No.14 of 2013, claiming damages, as the revision petitioner and his tenants had made use of the stair case in the suit schedule property even after the revocation of the licence from 01.01.2010 till 07.01.2023, and as such, the revision petitioner is liable to pay a sum of Rs.3,000/- as damages for the use of the stair case for 36 months, amounting to Rs.1,08,000/- with interest at 12% p.a. from the date of the suit till realisation. The Trial Court appreciating all the aforesaid aspects, rightly decreed the suit for recovery of damages and that since the revision petitioner/judgement debtor failed to pay the decree amount, the respondents/decree holders filed an Execution Petition and the said Petition was also rightly allowed by the Executing Court vide the impugned order. Therefore, this Court does not find any infirmity or illegality in the order passed by the Executing Court.



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16. In the result, this Civil Revision Petition stands dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

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sd.

Index :yes/no

To

The Subordinate Judge,
Gudalur, Nilgiris.



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N.Sathish Kumar, J.

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