



C.R.P.(PD).No.2150 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2150 of 2021
and CMP.No.16281 of 2021

Rajasekar

... Petitioner

vs.

1.Duraikannu
2.Murugesu Kounder (died)
3.Chitra
4.Ravi
5.Pazhanivel
6.Krishnaveni
7.Vijayalakshmi
8.Babu

(Respondent – 2 died. Respondents 3 to 8 brought on record as Lrs of the deceased R-2 viz., Murugesu Kounder vide Court order dated 17.08.2023 made in CMP.Nos.4225, 4227 and 4228 of 2023 in CRP (NPD).No.2150 of 2021)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside fair and decreetal order dated 02.09.2021 made in E.A.No.128 of 2019 in E.P.No.12 of 2017 in O.S.No.256 of 2002, on the file of the Additional District Munsif, Tindivanam.



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For Petitioner : Mr.D.Ravichander
For Respondents : Mr.Kaithamalai Kumaran for R1
R2-died

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court allowing the application filed by the respondent/decreed holder for removal of superstructure found in the subject matter of the suit and for disconnection of the electricity.

2. The respondents herein filed a suit for recovery of possession against the petitioner, the suit was dismissed by the trial Court and the same was confirmed by the First Appellate Court. The respondents filed S.A.No.446 of 2009 and the same was allowed by this Court by granting decree for possession over the 'A' schedule property. Thereafter, the said decree was put in to execution. The Executing Court ordered delivery of the property. The Senior Bailiff who went to the property to effect delivery found certain superstructure in the suit property and hence returned warrant seeking police help for removal of superstructure and for disconnection of electricity service connection.



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3. Therefore, the petitioner filed instant application seeking removal of superstructure and to order disconnection of the electricity. The suit 'A' schedule property was described as a vacant site at the time of filing of the suit. It appears the petitioner herein put up certain superstructure pendente lite. The executing Court by relying on Order XXI Rule 35 (3) of CPC held that the executing Court has got incidental power to pass necessary orders for effective enforcement of the decree for partition. The said position was very well explained in ***Madasami Vs. Govindaraj*** reported in **2007 (1) CTC 217**. The relevant observation of this Court reads as follows:

“16. On the proposition regarding permissibility of removal of illegal or unlawful construction made pendente lite by the Executing Court, we may refer to the decision of the Supreme Court in 1996 (1) LW 145 [B. Gangadhar v. B.G. Rajalingam]. In the said case also, the Bailiff returned the warrant of delivery of possession on the ground that the Judgment-Debtor/Tenant had constructed shops and inducted Tenants into possession and therefore, he could not execute the warrant. After enquiry, the Executing Court directed the Bailiff by warrant to demolish shops and deliver vacant possession to the Decree-Holder. The Petitioner challenged the Order in revision,



but was unsuccessful. In the Special Leave Petition preferred before the Supreme Court, holding that the Executing Court is mandated to decide all questions relating to right, title or interest in the property in the execution proceedings and that Executing Court would further be justified to Order removal of unlawful construction made pendente lite, the Supreme Court has held thus:

7.The Executing Court, therefore, would be justified to order its removal of unlawful or illegal construction made pendente lite so that the Decree for possession or eviction, as the case may be, is effectually and completely executed and the delivery of possession is given to the Decree-Holder expeditiously. Admittedly, pending suit the Petitioner had constructed shops and inducted Tenants in possession without permission of the Court. The only course would be to decide the dispute in the execution proceedings and not by a separate suit.

8. Order 21, Rule 35(3) envisages that:

Rule 35(3) of Order 21 itself manifests that when a Decree for possession of immovable property was granted and delivery of possession was directed to be done, the Court executing the Decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the Decree for possession. That power also includes the power to remove any obstruction or superstructure made



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pendente lite. The exercise of incidental, ancillary and inherent power is consequential to deliver possession of the property in execution of the Decree. No doubt, the Decree does not contain a mandatory injunction for demolition. But, when the Decree for possession had become final and the Judgment-Debtor or a person interested or claiming right through the Judgment-Debtor has taken law in his hands and made any constructions on the property pending suit, the Decree-Holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the Decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the Court. Otherwise, the Decree becomes inexecutable driving the Plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings.

17. When the construction was made pendente lite, the Executing Court ought to have ordered removal of obstruction of the superstructure made pendente lite.

4. In the light of the law laid down by the above mentioned case law, it is clear, the executing Court can direct removal of the superstructure that came into existence in the suit property pending litigation and hence the



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power of executing Court to order removal of the superstructure is only incidental for enforcement of the main decree. Therefore, the executing Court by rightly relying on Order XXI Rule 35 (3) of CPC, ordered removal of superstructure and disconnection of electricity service connection.

5. I do not find any irregularity or illegality in the order passed by the executing Court and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The Additional District Munsif,
Tindivanam.



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S.SOUNTHAR, J.

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