



Cont.P.(MD)No.1990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.02.2024

PRONOUNCED ON: 22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Cont.P.(MD)No.1990 of 2023

in

C.R.P.(MD)No.1007 of 2013

V.Muniasamy : Petitioner / Petitioner

Vs.

Mrs.J.Sangeetha,
District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
at Kamudhi,
Ramanathapuram District. : Respondent/Respondent

PRAYER:-Petition is filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnor / respondent for the deliberate and wilful disobedience of the order dated 09.12.2014, passed by this Court in C.R.P.(MD)No.1007 of 2013.



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For Petitioner : Mr.V.Muniasamy
Party-in-person

For Respondent : Mr.N.Mohideen Basha

ORDER

The petitioner has filed the above contempt petition under Section 11 of the Contempt of Courts Act, 1971, seeking orders to punish the respondent / Judicial Officer for the deliberate and wilful disobedience of the order dated 09.12.2014, passed by this Court in C.R.P.(MD)No.1007 of 2013.

2. This petition is a classic example for the Tamil proverb “ஆட்டைக் கடிச்சு இ மாட்டைக் கடிச்சு இ கடைசியில் மனுசனைக் கடிச்ச கதை மாதிரி” and would mean the story of biting a goat, biting a cow and finally biting a man.

3. At the outset, this Court is constrained to say that the petitioner, who is an Ex-Army person and an Advocate and who has also been appearing in person through out the proceedings from the trial Court, has



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been abusing and misusing the process of law and Court, by fully knowing that he cannot get possession of the properties legally, which are not the subject matter of the suit as well as the decree, has been adopting threatening tactics by filing petition after petition seeking to send for civil prison for the alleged disobedience of the orders of the Court, initially against the respondent, thereafter against the Revenue Officials including the jurisdictional Tahsildar, then against the learned Counsel for the legal representatives of the deceased judgment debtor, who appeared before the Executing Court and now lastly against the Judicial Officer, before whom the above proceedings were pending.

4. It is not in dispute that the petitioner filed a suit in O.S.No.2 of 1987 against the defendant for declaration and permanent injunction, that the trial Court has decreed the suit on 18.01.1999 in favour of the petitioner and others, that the defendant has preferred an appeal in A.S.No.134 of 1996 challenging the judgment and decree passed in O.S.No.2 of 1987 and the learned Principal District Judge, Ramanathapuram allowed the appeal and reversed the judgment and decree of the trial Court, that the petitioner and others, aggrieved by the appellate Court judgment, have preferred a Second Appeal in S.A.No.811



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of 1999 and this Court, vide judgment and decree dated 25.11.2009 allowed the Second Appeal and thereby setting aside the judgment and decree of the appellate Court and restored the judgment and decree of the trial Court.

5. At this juncture, it is pertinent to note that the property which was the subject matter of the suit and the decree and which was confirmed by this Court in the Second Appeal, is a vacant site of East West 10 yards and North South 16 yards (with four boundaries) in Melamudimannarkottai Village of Tiruchuli Taluk.

6. It is also not in dispute that in the meanwhile the petitioner has filed a writ petition in W.P.(MD)No.1569 of 2009, for issuance of Writ of Mandamus directing the Revenue Divisional Officer, Paramakudi, to implement the mandatory injunction dated 28.08.2006 and to issue direction to the Superintendent of Police, Ramanathapuram District to provide necessary police assistance to the Revenue Divisional Officer and pass orders within the time to be stipulated by the Court for issuing patta to the petitioner by the Tahsildar, Kamuthi Taluk to the house site in S.No.448/2, 448/11, 448/12, 448/13 and 448/14 and the learned Judge of



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this Court, vide order dated 18.09.2009, considering the submission made by the petitioner's side that the Second Appeal in S.A.No.811 of 1999 was pending for the same subject matter, by observing that the petitioner has to pursue his remedy in a civil Court and by holding that the disputed facts cannot be decided in a writ petition, dismissed the writ petition.

7. Aggrieved by the dismissal of the writ petition, the petitioner has preferred a Writ Appeal in W.A.(MD)No.50 of 2010 and the Hon'ble Division Bench of this Court, considering the representation made that the Second Appeal in S.A.No.811 of 1999 has been allowed in favour of the appellant, by observing that the appellant can secure the enforcement of the decree granted to him by the civil Court, dismissed the appeal vide judgment dated 28.01.2010.

8. It is evident from the records that the petitioner has then laid an execution petition seeking orders for evicting the encroachments and to recover the possession based on the judgment and decree in S.A.NO.811 of 1999, dated 25.11.2009 and the judgment in W.A.(MD)No.50 of 2010,



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dated 28.01.2010, but strangely giving new description of property showing the property in four parts in S.No.340 with separate boundaries and another property – house site in S.No.448 before the District Munsif Court, Manamadurai, but the same was returned on the point of territorial jurisdiction and that the same was presented before the District Munsif cum Judicial Magistrate, Kamuthi and the same was taken on file in E.P.No.2 of 2010.

9. As rightly contended by the learned Counsel for the respondent/contemnor, it is not known how the execution petition was taken on file, when some other properties which were not the subject matter of the suit and decree were also added therein. But the defendant has entered into appearance and since he has not chosen to file the counter statement, he was set exparte and delivery was ordered. It is further evident that the delivery warrant were returned twice unexecuted as the property cannot be identified, that the petitioner has then filed an application for amending the scheduled property in E.A.No.13 of 2011 and the same was allowed and thereafter delivery was ordered again and that the petitioner's other application seeking police help consisting of



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Sub-Inspector of Police and 20 other police constables was also allowed, but again warrant was returned for want of correct measurements.

10. It is evident from the records that the then District Munsif cum Judicial Magistrate, Kamuthi, after going through the records, has passed an order dismissing the E.P., mainly on the grounds that though the plaintiff has only sought for declaration and injunction and the same was granted, the question of taking delivery of the property does not arise, that there is no paimash number or survey number, that the Revenue Officials have stated that there is no such survey number for the suit property and that therefore, the decree cannot be executed.

11. Challenging the said dismissal order, the petitioner has preferred a revision in C.R.P.(MD)No.1007 of 2013 before this Court and a learned Judge of this Court, considering the submission of the petitioner that the judgment debtor subsequent to the judgment and decree encroached the property and took forcible possession of the same, has allowed the petition, vide order dated 09.12.2014 and that since the petitioner has claimed that the order passed in the said revision in C.R.P. (MD)No.1007 of 2013 was disobeyed by the respondent - Judicial



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Officer, the order portion is extracted hereunder:

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“7. In these circumstances, the order passed by the District Munsif cum Judicial Magistrate, Kamuthi are set aside. The Execution Petition in E.P.No.2 of 2010 in O.S.NO.2 of 1987 stands allowed. The Execution Court is directed to take up the matter in E.P.No.2 of 2010 and pass suitable orders in the Execution Petition for taking delivery of possession in respect of the suit property within a period of four weeks from the date of receipt of a copy of this order. The decree holder is also permitted to file appropriate application before the Execution Court for getting the assistance of the Revenue Officials and police for taking possession of the property. On such application being filed by the decree holder, the Execution Court shall direct the Revenue Officials and police for assisting the decree holder in taking possession of the suit property from the respondent / Judgment Debtor.”

12. In pursuance of the directions of this Court, the Execution Petition was taken up on 20.01.2015 and the learned District Munsif has passed the following order;

“ The petition and documents are perused. The order of



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the Hon'ble High Court passed in CRP 1007 of 2013, dated 09.12.2014 is perused. The Hon'ble High Court has directed to take up E.P.2 of 2010 on the file and to deliver the property within a period of 4 weeks. The bundle was received from High Court on 12.01.2015. The respondent partook in revision proceedings. The respondent is also aware of the order of the Hon'ble High Court. He is bound to deliver the suit property to the petitioner. The Hon'ble High Court has also permitted the petitioner to avail the police and revenue assistance at the time of taking delivery of the property. The identity of the property is not in dispute. Therefore it is ordered to hand over the possession of the property to the plaintiff on 28.01.2015 at 12.00PM. The Inspector of Police, Law and Order, Kamuthi is directed to make his presence in the suit property at the time of delivery for the purpose of extending his assistance to the court official for making delivery. The Tahsildar, Kamuthi shall depute a qualified surveyor to the Melamudimannar Kottai Village, wherein the suit property is located to assist the court official. The petitioner is directed to videograph the delivery proceedings at his own expenses and file the same in the court. If the respondent is willy-nilly available in the above village, it is directed to hand over the possession of the property to the petitioner. Advocate Mr.I.Senthil is appointed as Commissioner to execute the delivery



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warrant. The commissioner is authorised to avail any assistance to execute the order of the Hon'ble High Court. The petitioner is directed to pay a sum of Rs.2000/- to the commissioner as expenses. Delivery by 28.01.2015. Batta in 3 days. Batta paid and returned.”

13. When the matter was taken up on 28.01.2015, the learned District Munsif, by recording that batta with petition was filed by the petitioner on 28.01.2015, that the petitioner, the respondent and his Counsel were present and that the respondent has agreed to hand over the possession of the suit property, ordered for delivery by 04.02.2015 and also directed the Revenue and Police officials to assist the Advocate Commissioner.

14. It is pertinent to note that before entrusting the delivery warrant to the senior bailiff, the petitioner has filed a petition in E.A.No. 8 of 2015 on 03.02.2015 with a prayer to deliver one other property along with the suit mentioned property alleging that the District Munsif has only passed delivery order with respect to the suit property at item No.3 of the schedule of properties in Execution Petition and as such, it is mandatory for the Executing Court to deliver the 5th item of the E.P.,



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scheduled property bearing Survey No.448, in pursuance of the judgment passed by the Division Bench of the Madurai Bench of Madras High Court in W.A.No.50 of 2010, dated 28.01.2010. No doubt, as rightly pointed out by the petitioner, what he has claimed in the main execution petition in E.P.No.2 of 2010 was reiterated by seeking delivery of 5th item of E.P., schedule of properties.

15. It is evident from the records that the petitioner has then filed an application in E.A.No.11 of 2015 by alleging that the respondent / Judgment Debtor is wilfully disobeying the judgment of the High Court, has sought for orders to detain the judgment debtor in civil prison and to attach the immovable properties shown in the petition. Thereafter the petitioner has filed another application in E.A.No.4 of 2021 alleging that the revenue officials were wilfully objecting for delivery and thereby wilfully disobeyed the orders of the High Court, has sought for issuance of notice to the Revenue Divisional Officer, Paramakudi and the Tahsildar, Kamuthi Taluk. Since the defendant / judgment debtor had died, the petitioner and other decree holders have filed a petition in E.A.No.2 of 2022 alleging that the Revenue Inspector, Kamuthi West, VAO, Melamudimannarkottai Village and the Surveyor are acting at the



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instigation of the legal heirs of the deceased judgment debtor and thereby they have wilfully disobeyed the orders of this Court, sought orders for detaining the legal heirs of the judgment debtor and the revenue officials and send them to civil prison. Thereafter the petitioner has filed another application in E.A.NO.3 of 2022 seeking orders to detain the Counsel appearing for the legal heirs of the deceased judgment debtor and send him to civil prison for resisting and obstructing to deliver the immovable properties to the decree holder.

16. It is not in dispute that in the meanwhile, the petitioner has filed a revision in C.R.P.(MD)NO.847 of 2020 seeking speedy disposal of the petition in E.A.No.11 of 2015 in E.P.No.2 of 2010, on the file of the District Munsif cum Judicial Magistrate, Kamuthi and the learned Judge of this Court, vide order dated 13.04.2022, taking note of the fact that the suit was of the year 1987 and that the Execution Petition has been filed in 2010, directed the District Munsif, Kamuthi to dispose of the petition in E.A.NO.11 of 2015 in E.P.No.2 of 2010 within a period of two months from the date of receipt of a copy of that order and thereafter dispose of the E.P., within a period of one month. Subsequently, alleging non-compliance to the order passed in C.R.P.No.847 of 2022,



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the petitioner has filed a contempt petition against the very same Judicial Officer, against whom the present contempt has been filed and the learned Judge of this Court, by observing that there has been only a minor delay in disposal of the execution petition, that the learned District Munsif should have applied for extension of time, but she has proceeded to pass orders on merits and that though the procedure adopted was irregular, the same does not attract contempt of Court and by holding that there is no merit in the contempt petition, dismissed the same at the SR., stage itself, vide order dated 27.04.2023.

17. In pursuance of the directions of this Court, the learned District Munsif cum Judicial Magistrate, after conducting enquiry in the main execution petition as well as in the execution applications, has passed separate orders dated 05.09.2022 and dismissed the same. After dismissal of the earlier contempt petition in SR., stage on 27.04.2023, the petitioner has filed the present contempt petition alleging that the District Munsif has informed the High Court that the petition in E.A.NO.11 of 2015 was dismissed and the execution petition in E.P.No.2 of 2010 was disposed of on 05.09.2022 and on that basis, the High Court has passed the orders, but actually the District Munsif has terminated the execution



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proceedings on 05.09.2022 without any authority, that the District Munsif has furnished false information to the High Court that the execution petition was disposed of and that the same would amount to contempt of Court.

18. The petitioner's further case is that the learned District Munsif, without complying with the orders of the High Court passed in C.R.P. (MD)No.1007 of 2013 and C.R.P.(MD)No.847 of 2022, has deliberately and wilfully dismissed E.A.No.11 of 2015 and terminated the execution proceedings and that the petitioner's application in E.A.No.8 of 2015 filed under Order 21 Rule 97 C.P.C., as the judgment debtor has resisted and obstructed to deliver the property, should have been disposed of within 30 days as per Article 129 of the Limitation Act, but the said application was not yet disposed of.

19. It is the further case of the petitioner that when the order of temporary injunction was filed before the Executing Court for enforcement under Order 39 Rule 2(A) C.P.C., the District Munsif has returned the petition with an observation that E.P.No.2 of 2010 was disposed of on 05.09.2022 and as such, the temporary injunction could



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not be enforced and that therefore, the contemnor/respondent is liable to be punished for her deliberate and wilful disobedience of the order of this Court dated 09.12.2014 made in C.R.P.(MD)No.1007 of 2013.

20. Article 129 of the Limitation Act provides 30 days period of limitation for applying possession after removing resistance or obstruction in delivery of possession of immovable property decreed or sold in execution of a decree and the time begins to run from the date of resistance or obstruction and as such, the said Article has nothing to do with the disposal of the application.

21. On a close scrutiny of the affidavit filed in support of the contempt petition, this Court is at loss to understand as to on what reasons and grounds, the contempt petition was filed against the Judicial Officer. It is pertinent to mention that in pursuance of the directions of this Court passed in C.R.P.(MD)No.1007 of 2013, the then learned District Munsif has passed an order directing the judgment debtor to deliver the property and also appointed the Advocate Commissioner to execute the delivery warrant and further directed the revenue and police authorities to help the Advocate Commissioner. More importantly, the



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judgment debtor has filed a memo to surrender the possession of the suit property which has been left vacant from the date of the suit. But before taking delivery, the petitioner has staged a new drama that he has to be given possession of another property as per the judgment of the Division Bench made in the writ appeal.

22. As already pointed out, the petitioner has filed the writ petition seeking patta for the house sites in S.Nos.448/2, 448/11, 448/12, 448/13 and 448/14 and the learned Judge has specifically observed that though the petitioner has claimed ownership of the said house sites ancestrally, has also taken a stand that he got the lands as per the assignment order Nos.89 to 93 of 1997, dated 20.07.1987 and that as per the records, the petitioner is the owner of the property in Survey No.448/1 and patta has been issued in his favour for that property and that therefore, the petitioner cannot claim any right in respect of other lands which were admittedly assigned to other persons. The Hon'ble Division Bench in the Writ Appeal, as already pointed out, has only observed that the appellant – petitioner herein can always secure the enforcement of the decree granted to him by the civil Court, since the Second Appeal has already been allowed in his favour.



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23. Considering the judgment of the Hon'ble Division Bench, it is very much clear that they have only observed that the petitioner can execute the decree granted to him by the civil Court and they have not stated anything about any other property, except the one in the decree of the civil Court. As rightly observed by the learned District Munsif, the petitioner, by misinterpreting the order of the Hon'ble Division Bench, has been claiming possession of the other property, which is not the subject matter of the suit and decree and the executing Court has rightly rejected his claim . As already pointed out, with regard to the suit property, for which the decree was granted in favour of the petitioner, the judgment debtor has already filed a memo to surrender the possession of the suit property and more importantly, which is lying vacant from the date of the suit itself.

24. As rightly observed by the learned Executing Court, though the petitioner has not mentioned any survey number, in which the suit property is situated in the plaint and consequently the same does not find place in the decree also, but the petitioner in the execution petition has added some other properties and when the executing Court has issued



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delivery warrant to deliver the 3rd item of the properties, which is the subject matter of the suit and decree, he has also claimed the possession of the 5th item, which is not the subject matter of the suit and decree. Moreover, in the execution petition in E.P.No.2 of 2010, he has shown that the properties were situated in two survey numbers ie., in S.Nos.340 and 448 and subsequently, he amended the petition by replacing the survey number 340 by 448.

25. As rightly observed by the executing Court, though the petitioner has given the sub division numbers of S.No.448 in the writ petition filed in W.P.No.1516 of 2009, as 448/2, 448/11, 448/12, 448/13 and 448/14, in the execution petition filed in E.P.No.2 of 2010, he has only mentioned S.No.448 and not furnished the sub division numbers. It is also pertinent to note that when the property was amended, the petitioner has not chosen to give the sub division numbers at that time also and he has not offered any reason or explanation for the same.

26. Considering the above, it is clear that the petitioner has suppressed the real Survey Number and gave the entire survey number of



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448 to get over the finding given by the writ Court in W.P.No.1516 of 2009 and thereby mislead the executing Court. Considering the entire facts and circumstances, the order of the executing Court, terminating the execution proceedings in E.P.No.2 of 2010 cannot be found fault with. Since the petitioner has not shown that the respondent and the legal representatives of the respondent, their Counsel and the revenue officials have wilfully resisted and obstructed for effecting delivery and the petitioner alone was at fault in claiming delivery of the property, which is not the subject matter of the suit and decree, the dismissal of the applications cannot also be found fault with.

27. As already pointed out, the learned Judge of this Court in C.R.P.(MD)No.1007 of 2013, has directed the executing Court to pass suitable orders for taking delivery of possession in respect of the suit property. It is pertinent to note that since the executing Court dismissed the E.P., mainly on the ground that the plaintiffs have filed the suit for declaration and permanent injunction and obtained the decree for the same and in the absence of any decree for possession, the question of taking delivery of the suit property does not arise. But this Court, taking note of the submission of the petitioner's side that the judgment debtor



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has encroached and forcibly took possession of the property subsequent to the decree, has directed the executing Court to deliver the suit property.

28. More importantly, though the Writ Appeal was disposed of as early as on 28.01.2010, the petitioner has not raised anything with respect to the filing of the writ petition as well as writ appeal and the disposal of the same before this Court in C.R.P.(MD)No.1007 of 2013 and the petitioner has not claimed any relief with respect to the property shown in the writ petition before the revisional Court. Considering the above, the petitioner alone is guilty of suppression of material facts before this Court as well as before the writ Court, revisional Court and before the executing Court and he has not approached the executing Court with clean hands.

29. The petitioner is not a lay man and as already pointed out, he is an Advocate and he has been appearing all the proceedings through out. Hence, the observation of the executing Court that the petitioner has misinterpreted the order made in writ appeal cannot be accepted. On the other hand, fully knowing the scope and nature of the orders passed in



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the writ petition as well as in the writ appeal, he had attempted to take possession of the property, which is not the subject matter of the suit and decree and by filing petition after petition, has consumed considerable time of this Court as well as the executing Court. The petitioner, after failing in his attempt to take the possession of the property, which is not the subject matter of the suit and decree legally, has started to adopt threatening tactics by intimidating the other side and the officials by filing petitions for sending them to civil prison and to take possession illegally.

30. As already pointed out, this is the second contempt petition filed against the present respondent / Judicial Officer. As a member of the District Judiciary for more than 25 years, I can visualise the trauma and mental agony suffered by the Judicial Officer from the date of receipt of notice in the contempt petition. Generally, filing of contempt petition cannot be taken lightly by anybody and the pendency will be considered as a sword hanging on their head. As already pointed out, there is nothing wrong on the part of the present respondent – Judicial Officer or the earlier judicial officers, except one step ie., taking the above execution petition on file with more properties which are not the subject



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matter of the suit and decree. I am also informed that the petitioner has given a letter to the Registrar (Judicial) seeking the names of the Judicial Officers, who were working in the said Court previously for including them as the respondents / contemnors. The petitioner, without any basis, without raising any valid or acceptable reason or grounds, has filed the above contempt petition and considering the way in which the present contempt petition has been filed and the way in which he has filed so many applications against the defendant / legal heirs of the defendant and revenue officials, this Court has no hesitation to hold that the petitioner has been abusing and misusing the process of law and Court and as such, he must be mulcted with heavy costs.

31. In the result, the Contempt Petition is dismissed with costs of Rs.25,000/-(Rupees Twenty Five Thousand only) payable by the petitioner to the respondent / Judicial Officer, within a period of two weeks from the date of receipt of a copy of this order.

32. Post the matter after three weeks for reporting compliance.



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NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. Mrs.J.Sangeetha,
District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
at Kamudhi,
Ramanathapuram District.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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