



C.R.P.(MD)No.1865 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.03.2024

Pronounced on : 12.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1865 of 2017

Nangaiyar

... Petitioner

Vs.

1. Muthukumarasamy (Died)
*(Memo dated 09.02.2024 filed on 14.02.2024 in
USR.No.5877 is recorded, to the effect that R1
died and since he was set ex parte before the
Court below, steps to bring his LRs on record is
dispensed with, vide Court order dated 19.02.2024
made in CRP(MD)No.1865 of 2017)*

2. Nesamani

3. Kumarasamy

4. Benildas Fernando

... Respondents

Prayer : This Civil Revision Petition filed under Section 115 C.P.C., to set aside the fair and decretal order dated 25.07.2017 passed in E.P.No.41 of 2015 in O.S.No.136 of 2011 on the file of learned District Munsif, Thiruchendur.



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For Petitioner : Mr.S.Pon Senthil Kumaran
For R2 & R4 : No appearance
For R3 : Mr.R.Balakrishnan

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.41 of 2015 in O.S.No.136 of 2011 dated 25.07.2017 on the file of the District Munsif Court, Tiruchendur, dismissing the execution petition filed under Order 21 Rule 32 of the Code of Civil Procedure.

2. The revision petitioner as plaintiff has filed the suit in O.S.No. 136 of 2011 against the respondents 1 and 2/defendants 1 and 4 and two others claiming permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the suit property. The defendants 1, 3 and 4 have filed their written statement and contested the suit, whereas, the second defendant has remained *ex parte*. After full-trial, the learned District Munsif has passed a judgment and decree dated 24.01.2014 granting permanent injunction restraining the defendants from evicting the plaintiff from the suit property without due



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process of law. The learned trial Judge, by observing that the plaintiff was admittedly a permissive occupier in respect of the suit property, has come to a decision that the plaintiff should not be evicted from the suit premises without due process of law. Thereafter, the revision petitioner has filed the above execution petition in E.P.No.41 of 2015 alleging that the respondents have been interfering with the revision petitioner's peaceful possession of the suit property and attempting to evict him forcibly have violated the decree for permanent injunction and that therefore, the respondents have to be punished by sending them to civil prison. The respondents 2 to 4 have filed counter statements raising serious objections. The learned District Munsif, after enquiry, has passed the impugned order dated 25.07.2017 dismissing the execution petition. Aggrieved by the order of dismissal, the present revision came to be filed.

3. The case of the revision petitioner, in the affidavit filed in support of the execution petition, is that the respondents 1 and 2, who are the defendants 1 and 4, along with the respondents 3 and 4 had attempted to vacate the revision petitioner unlawfully from the petition mentioned premises, that the revision petitioner's brother Selvaganapathy had lodged



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a complaint before Kulasekarapattinam Police Station and on that basis, FIR came to be registered, that the respondents, after remaining silent for some time, have again been attempting to evict the revision petitioner from the petition mentioned premises, that the respondents 3 and 4 fully knowing about the decree for permanent injunction granted in favour of the revision petitioner in collusion with the respondents 1 and 2 are acting against the revision petitioner, that the decree is binding on the respondents 3 and 4 also and that since they have been interfering with the revision petitioner's possession, the revision petitioner was constrained to file the execution petition.

4. The respondents 2 & 4 and the third respondent have filed their counter statements raising serious objections and disputing the revision petitioner's averments in the execution petition.

5. It is not in dispute that the revision petitioner's brother Selvaganapathy is having half share and the first respondent is also having half share in the suit property, that the first respondent sold his half share to the second defendant, who in turn sold to the fourth respondent and one



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Kayatkani and that the said Kayatkani sold the property purchased by her to the second respondent.

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6. As already pointed out, the main contention of the revision petitioner is that the respondents had already made an attempt to evict him forcibly and his brother has lodged the complaint before the jurisdictional police and thereafter, the respondents had remained silent for some point of time. It is their further contention that the respondents had again attempted to evict the revision petitioner from the petition mentioned premises unlawfully and that therefore, he was constrained to file the above execution petition.

7. It is pertinent to note that the revision petitioner alleging violation of the decree for permanent injunction has to raise necessary averments specifically with regard to the attempts made by the respondents to dispossess him forcibly. Admittedly, the revision petitioner has not even chosen to furnish the dates and other particulars of the occurrence alleged by him. The executing Court, taking note of the evidence, has observed that though the revision petitioner has alleged that the respondents were



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putting non-vegetarian waste in the suit property, he has not produced any iota of evidence to prove the same and that the photographs Ex.P1 does not say that there was any obstruction or encroachment in the suit property. In the absence of any acceptable evidence or materials to show the alleged attempts made by the respondents to dispossess the revision petitioner forcibly from the petition mentioned premises, the question of punishing the respondents for violating the decree for permanent injunction does not arise at all. As rightly observed by the executing Court, the revision petitioner has not produced any iota of evidence to show that the respondents have violated the decree of the Court.

8. Considering the above, the impugned order dismissing the execution petition cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. No costs.

12.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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To

1. The District Munsif,
Tiruchendur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.R.P.(MD)No.1865 of 2017**

Dated : 12.04.2024