



C.R.P.(MD)No.3205 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2023

Pronounced on : 12.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3205 of 2023

and

C.M.P.(MD)No.16533 of 2023

Ayyavoo Pandithan (Died)

K.Nanthirajan

... Petitioner/
Respondent/
Defendant

Vs.

Naina Mohamed (Died)

Nagoor Kani

... Respondent/
Petitioner/
Plaintiff

Prayer : This Civil Revision Petition filed under Section 151 of Civil Procedure Code, to set aside the fair and decreetal order dated 15.09.2023 made in E.P.No.68 of 2018 in O.S.No.89 of 1978 on the file of the District Munsif Court, Melur and allow the above civil revision petition.



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For Petitioner : Mr.D.Senthil

For Caveator : Mr.M.Mohamed Ajeesdheen

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.68 of 2018 in O.S.No.89 of 1978 dated 15.09.2023 on the file of the District Munsif Court, Melur, ordering arrest and detention of the revision petitioner/judgment debtor in the civil prison and for removal of temporary construction made in the B schedule property and for handing over the vacant possession of the same.

2. Originally, the respondent's father Naina Mohamed has filed the above suit claiming the reliefs of declaration and permanent injunction, that the revision petitioner's father Ayyavoo Pandithan has filed his written statement defending the suit and that the learned District Munsif, after full trial, has decreed the suit vide judgment dated 03.05.1980 declaring that the plaintiff Naina Mohamed is entitled to the suit property measuring 22 feet East-West and 23 feet 3 inches North-South and granting permanent injunction restraining the defendant Ayyavoo Pandithan and his men and



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agents from in any way interfering with the plaintiff's peaceful possession and enjoyment of the above said property. The revision petitioner's father Ayyavoo Pandithan has preferred an appeal in A.S.No.216 of 1980 and the same was also dismissed.

3. It is not in dispute that the revision petitioner's father Ayyavoo Pandithan has filed an another suit in O.S.No.553 of 1988 against the respondent's father Naina Mohamed with respect to the same property shown in O.S.No.89 of 1978, that the suit in O.S.No.553 of 1988 was dismissed and that the appeal and the second appeal at the instance of the revision petitioner's father Ayyavoo Pandithan were also dismissed.

4. Pending proceedings, the plaintiff Naina Mohamed and the defendant Ayyavoo Pandithan had died. The respondent-son of the plaintiff/decreed holder, by alleging that the revision petitioner, after death of his father, had disrespected the decision of the Court by putting a temporary thatched shed in the vacant site of the B schedule property on 27.03.2007 and that since the revision petitioner is working as a Special Sub Inspector of Police in Tallakulam Police Station at that time, the



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police complaints lodged by the respondent were of no avail, has laid the execution petition seeking orders to punish the revision petitioner for his willful disobedience of the decision of the Court by arrest and detention in the civil prison and also for removal of the thatched shed put up by the revision petitioner in the B schedule property and for handing over the vacant possession of the same. The revision petitioner has filed a counter affidavit raising objections that the execution petition filed on 21.06.2018 is clearly barred by limitation as per Article 136 of the Limitation Act, that two earlier execution petitions were already dismissed, that the other legal heir of the judgment debtor-sister of the revision petitioner has not been impleaded and that the decree holder's another son and daughters were not impleaded and as such, the petition is bad for non-joinder of necessary parties. The learned District Munsif, after enquiry, has passed the impugned order granting the reliefs claimed vide order dated 15.09.2023. Challenging the same, the present revision came to be filed.

5. As rightly observed by the learned District Munsif, the other two earlier execution petitions were filed only for recovery of cost and not for the reliefs claimed in the present execution petition. Moreover, there is



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absolutely no bar or prohibition for filing execution petitions within the period of limitation, if any prescribed by the Limitation Act and the decree holder can file any number of execution petitions, within the period of limitation, if any, till the termination of the execution proceedings.

6. Regarding the non-impleadment of the judgment debtor's other legal heir i.e., sister of the revision petitioner, the learned District Munsif, taking note of the admission made by the revision petitioner himself that he alone had put up the thatched shed in the B schedule property and that his sister Arumugam had already shifted her residence to Thirupachethy Village, has rightly rejected the said objection. Moreover, as rightly contended by the learned counsel appearing for the caveator, any one of the legal representative of the deceased decree holder can very well maintain the execution petition and as such, the above said objection cannot also be sustained.

7. Now turning to the main objection of the revision petitioner that the execution petition itself is clearly barred by limitation, the learned counsel appearing for the revision petitioner would submit that the appeal



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in A.S.No.216 of 1980, which was filed challenging the judgment and decree passed in O.S.No.89 of 1978, was dismissed on 15.04.1981, that since the appellate Court decree has attained finality, the limitation to file the execution petition got started on 15.04.1981 and that therefore, the execution petition filed on 21.06.2018 is clearly barred by time. He would further submit that though the plaintiff has claimed the reliefs of declaration and permanent injunction, the trial Court has granted the relief of mandatory injunction and as such, the execution petition ought to have been filed within three years and the execution petition filed in 2018 is undoubtedly barred by time.

8. It is pertinent to note that admittedly, apart from the relief of declaration for title, the decree for permanent injunction came to be passed and the same was confirmed by the appellate Court, whereunder, the defendant and his men and agents were specifically restrained from in any way interfering with the plaintiff's peaceful possession and enjoyment of the B schedule property. As rightly contended by the learned counsel appearing for the caveator, the above decree, by no stretch of imagination, can be taken as a decree for mandatory injunction. No doubt, Article 135



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of the Limitation Act, 1963 provides three years limitation for the enforcement of a decree granting a mandatory injunction and the time begins to run from the date of the decree or where a date is fixed for performance, such date. Article 136 contemplates a limitation period of twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court and the time begins to run when the order or decree becomes enforceable. But there is a specific proviso to Article 136 which contemplates that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

9. The High Court of Himachal Pradesh in ***Karam Chand Vs. Shri Paras Ram*** passed in ***CR.No.158 of 2019 dated 05.01.2021***, even in a case of combined decree of mandatory injunction and prohibitory injunction, has observed as follows;

“(11) In the aforesaid authority it has been held that if the suit is decreed for demolition and possession then decree for demolition becomes non executable if execution is not filed within three years, however, decree for possession may be enforced by filing execution application within 12 years and in the latter contingency defendant/JD would be either



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entitled to take away the superstructure or he would be paid the cost thereof. Same principle applies to a combined decree of mandatory injunction and prohibitory injunction. The third relief granted by the trial Court and maintained upto this Court is for a perpetual prohibitory injunction. The operative portion of the judgment by the trial Court is not very happily worded, however, reading it along with issue No. 5 regarding relief it is quite clear that it has also been decreed that the plaintiff has right of passage through ABCDEFGA unobstructed in any way. It means that decree for permanent prohibitory injunction has also been granted. Such a decree cannot be enjoyed unless constructions in the passage apart from wall E X are removed. For executing a decree for permanent prohibitory injunction no time limit is prescribed (proviso to article 136 of the Schedule to the Limitation Act 1963). The trial Court passed the decree for removal of construction also. Accordingly, in my opinion, just as decree for possession remains intact even if execution application for executing decree for mandatory injunction is not filed within three years, similarly, decree for permanent prohibitory injunction remains executable even if application for executing that part of the decree through which mandatory injunction has been granted is not filed within three years. Further, if in order to execute the decree for permanent prohibitory injunction, removal of some construction is



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necessary then it may be done at any time even though it was also directed to be done through the decree by way of mandatory injunction.”

10. Considering the above, this Court has no hesitation to hold that since the present decree is only for permanent injunction, the question of limitation does not arise at all.

11. The learned counsel appearing for the revision petitioner has relied on the judgment of this Court in ***Vasanthha Vs. Manickam @ Thandapani and another*** passed in ***C.R.P.(NPD)No.722 of 2017 dated 14.03.2017***, wherein, a decree for specific performance was passed and in pursuance of the same, sale deed was executed in the first execution proceedings, that the execution petition was filed seeking recovery of possession of the property, for which, sale deed was executed and that when the said execution petition for possession was allowed, the same was challenged before this Court and this Court, taking note of the judgment of the Hon'ble Supreme Court in ***Adcon Electronics Pvt. Ltd. Vs. Daulate and another*** reported in ***2001 (4) CTC 39*** and Section 22 of the Specific Relief Act, has held that since the plaintiff therein has not claimed the



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relief of recovery of possession specifically and in the absence of any decree for possession, the same cannot be claimed in the execution proceedings, by setting aside the order of the trial Court, allowed the revision. The above decision is not applicable to the facts of the case on hand.

12. The learned counsel appearing for the revision petitioner has relied on the decision of another learned Judge of this Court in *Nazeema Parveen and others Vs. A.Zubeidha Bee* reported in *AIR 2010 Madras 57*, wherein, this Court has specifically held that legal representatives of the contemnor cannot be proceeded with contempt proceedings as the action for contempt is personal in nature and abates along with death of contemnor. In the case on hand, since the petition is not filed, invoking the Contempt Jurisdiction, the above decision cannot be applied.

13. The learned counsel appearing for the revision petitioner has also relied on the judgment of this Court in *Selvaraj Vs. Ponnuthai (died) and others* reported in *2019 4 L.W. 947*, wherein, a learned Judge of this Court has held that prior to the filing of the execution proceedings seeking



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arrest for disobedience, the decree holder has to give an opportunity to the judgment debtor to obey the decree and only if after such an opportunity has been granted and the judgment debtor willfully fails to rectify his mistake, then the decree can be enforced in the case of injunction either by his arrest or by attachment of his property. The learned Judge has further observed that the decree holder is bound to satisfy the Court that an opportunity has been given to the judgment debtor to comply with the decree and despite such an opportunity is being given, the judgment debtor has willfully failed to obey the decree.

14. As rightly contended by the learned counsel appearing for the caveator, in the case on hand, the appellate Court has confirmed the judgment of the trial Court as early as on 15.04.1981 and another legal proceedings commenced by the revision petitioner's father and taken up to this Court, were ended in failure. The respondent has filed the execution petition as early as on 21.06.2018, wherein, he has specifically complained about the construction of the temporary thatched shed by the revision petitioner unlawfully and sought the reliefs of removal of the same and for arresting him for his willful disobedience of the decree.



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15. It is not in dispute that the revision petitioner has filed a counter affidavit running to 21 paragraphs in response to the execution petition on 15.06.2019.

16. It is evident from the records that the above execution petition was pending for nearly five years and the impugned order came to be passed only on 15.09.2023. Though the execution petition was pending for nearly five years, the revision petitioner has not chosen to comply with the demands made in the execution petition, but on the other hand, he has raised all sorts of defence including the plea of limitation.

17. As already pointed out, the revision petitioner, in his evidence before the executing Court, has specifically admitted that he alone had put up the thatched shed in the B schedule property. Considering the above, the finding of the executing Court that the respondent had established that the revision petitioner had put up a thatched shed over the B schedule property with the knowledge of the decree passed in favour of the plaintiff and as such, the same would amount to willful disobedience of the decree of the Court, cannot be found fault with.



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18. As rightly pointed out by the learned counsel appearing for the caveator, Rule 32(5) of Order 21 C.P.C. contemplates that where a decree for an injunction has not been obeyed, then the Court can, direct that the act required to be done can be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor and explanation to the said rule has declared that the expression 'the act required to be done' covers prohibitory as well as mandatory injunctions. Considering the above, the impugned order, allowing the execution petition and ordering arrest and detention of the revision petitioner in the civil prison and for removal of thatched shed in the B schedule property and for handing over the vacant possession of the same, cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

19. In the result, this Civil Revision Petition is dismissed. The learned District Munsif, Melur, is hereby directed to execute the order passed in E.P.No.68 of 2018 in O.S.No.89 of 1978 dated 15.09.2023 within a period of one month from the date of receipt of a copy of this



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order and to submit a compliance report before this Court. Consequently,
connected Miscellaneous Petition is closed. No costs.

12.01.2024

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

Note : Issue order copy on 19.01.2024

To

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



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.3205 of 2023
and
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Dated : 12 .01.2024