



C.R.P.(MD).No.631 of 2024

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 11.03.2025**

**CORAM:**

**THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR**

C.R.P.(MD).No.631 of 2024

and

CMP(MD)No.3111 of 2024

Rajan .. Petitioner/3<sup>rd</sup> respondent/3<sup>rd</sup> party

Vs.

1.T.P.David Dhas .. 1<sup>st</sup> Respondent/1<sup>st</sup> Petitioner/3<sup>rd</sup> Party

Palayyan (Died) .. ---/2<sup>nd</sup> Petitioner/2<sup>nd</sup> Plaintiff  
2.Conservator of Forests  
State of Tamil Nadu, Madras  
(Presently the Principal Chief Conservator of  
Forests, State of Tamil Nadu, Panakal Buildings,  
Thenampettai, Chennai)

3.Sreevalsan .. 3<sup>rd</sup> & 4<sup>th</sup> Respondents/1<sup>st</sup> and 2<sup>nd</sup>  
Respondents/1<sup>st</sup> Defendant & 3<sup>rd</sup> Party

|                |   |                            |
|----------------|---|----------------------------|
| For Petitioner | : | Mr.S.P.Maharajan           |
| For R1         | : | Mr.H.Lakshmi Shankar       |
|                |   | Special Government Pleader |
| For R2 & R3    | : | -No Appearance-            |



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**Prayer:** This civil revision petition is filed under Article 227 of the Constitution of India to call for the records and set aside the fair and decreetal order dated 08.02.2024 made in E.P.No.17 of 2017 in O.S.No.1 of 1981 on the file of the Principal District Munsif Court, Kuzhithurai, by allowing this Civil Revision Petition.

### **ORDER**

The 3<sup>rd</sup> party to O.S.No.1 of 1981 on the file of the Principal District Munsif Court, Kuzhithurai has filed the present revision petition, challenging the order passed by the execution Court in E.P.No.17 of 2017 wherein the execution Court had ordered for attachment of movables of forest department invoking Order XXI Rule 32 of “Code of Civil Procedure, 1908” (hereinafter referred as “Code”).

2. A perusal of the records reveal that the vendor of the 1<sup>st</sup> respondent namely one Palayyan along with two other persons had filed the above said suit for the relief of permanent injunction not to disturb their possession unless by due process of law. The suit was filed as against the officials of the forest department. After contest the suit, was decreed on 19.11.1983. The said decree has attained finality.

3. One of the the decree-holder namely Palayyan had executed a



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registered sale deed in favour of the first respondent herein namely T.P.David Dhas on 01.07.1996. Alleging that the forest officials are disturbing possession continuously, in violation of the injunction decree, the purchaser of the property had filed E.P.No.17 of 2017 under Order XII Rules 16, 22 & 32 of the Code for attachment of movables and for payment of compensation or for civil arrest of the officials of the forest department.

4. A perusal of the affidavit filed in support of the execution petition reveals that the forest officials have filed certain criminal cases as against the decree-holder, and they have also disturbed the possession of the decree-holder in violation of the injunction decree. This has prompted the decree-holder to file such an application. The application was resisted by the forest officials on the ground that the land is owned by forest department and at no point of time, the decree was violated by the concerned authorities.

5. It was further contended on the side of forest officials that already they have initiated proceedings under Section 68 A of the “Tamil Nadu Forest Act, 1882” (hereinafter referred as “Act”) for evicting the petitioner. In such circumstances, the application filed for initiating



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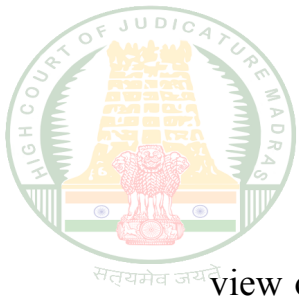
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action as against the forest officials for alleged violation of the injunction decree is not sustainable.

6. The executing Court had found that the forest officials concerned have filed O.S.No.106 of 1986 for recovery of the property in dispute on the file of the Additional District Munsif, Kuzhiturai and the said suit was dismissed for default on 25.03.1992. The executing Court also considered the fact that the forest department has filed O.S.No.352 of 1997 on the file of the Second Additional District Law Judge, Kuzhiturai seeking injunction as against the first respondent herein, for the property in dispute. Though the said suit was decreed by the trial Court, on appeal in A.S.No.36 of 2003 on the file of the sub-Court, Kuzhiturai, the suit was dismissed by the first appellate Court.

7. The executing Court had further relied upon the documents filed on the side of the decree-holder and found that continuously the forest officials are disturbing the possession of the decree-holder without taking due process of law.

8. The executing court has further observed that the proceedings under Section 68 A of the Act was issued long back and held that the suits filed by the forest department had already been dismissed and in



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view of the fact that already thirty years have expired, the decree-holder had prescribed title by adverse possession and therefore, the department would not be entitled to initiate proceedings under Section 68 of the Act. Based upon these findings, the executing Court has proceeded to order attachment of movable properties of forest department. Challenging the same, the present civil revision petition has been filed by the forest guard.

9. According to the learned Special Government Pleader, the property in dispute belongs to the forest department. It is the land under the disposal of the forest Government therefore, even for such a land they are entitled to initiate proceedings under Section 68A of the Act. Therefore, the attempt made by the officials was only to protect the property of the Government. In such circumstances, the movable properties of the forest department ought not to have been attached in the execution proceedings.

10. He further contended that the executing Court had unnecessarily made observations with regard to title of the decree-holder and he also prayed for expunging/remarks/observations. The forest ranger, Kaliyal Post has filed an affidavit to the effect that the department



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will not disturb the possession of the purchaser from the decree-holder and they would initiate appropriate proceedings under the Act. This affidavit is taken on record.

11. *Per-contra*, the learned counsel appearing for the respondent had contended that the first appellate Court in A.S.No.36 of 2003 has categorically held that the land in dispute does not belong to the forest department and its a private property. He further contended that despite a decree for permanent injunction, the authorities are continuously initiating proceedings as against the decree-holder. He pointed out that at least two criminal cases have been lodged as against the purchaser from the decree-holder alleging violation of the Act. Ultimately, the decree holder has been acquitted by the criminal Court with an observation that these proceedings have been initiated with a *mala-fide* intention. This has prompted the decree-holder to file execution proceedings under Order XXI Rule 32 of the Code.

12. The learned counsel for the respondent had further contended that the suit filed by the forest department in O.S.No.106 of 1986 seeking recovery of possession was dismissed for default on 25.03.1992. The suit filed by the forest department in O.S.No.352 of 1997, seeking permanent



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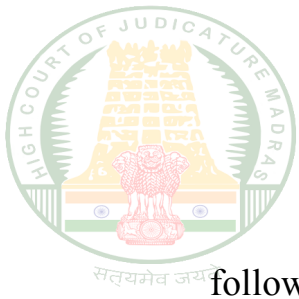
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injunction. Though decreed by the trial Court, was dismissed by the first appellate Court in A.S.No.36 of 2003. Therefore, it is clear that the forest officials are continuously disturbing the possession of the decree-holder/purchaser in violation of the injunction decree. Hence, he prays for sustaining the order for attachment, passed by the executing Court.

13. Heard both sides and perused all the available materials on record.

14. The documents filed in E.P.No.17 of 2017 would clearly indicate that despite there being an injunction decree, not to disturb the possession of the decree-holder/purchaser, the forest officials have been continuously disturbing the possession of the plaintiff either by initiating some criminal proceedings or physically entering into an altercation with the decree-holder. Ample documents have been filed on the side of the decree-holder to establish the fact that his possession was being continuously disturbed in violation of the injunction decree. In such circumstances this Court is of the considered opinion that the authorities have violated the injunction decree.

15. The forest ranger has now filed an affidavit of undertaking. The relevant portion in paragraph No.4 of the affidavit is extracted as



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follows:-

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*In these circumstances, I hereby undertake that we will not disturb the possession of the petitioner herein in the suit schedule property except by following due process of law without prejudice to our defence in the suits referred supra filed by the Petitioner/Plaintiff claiming damages as against the officials and Government. We also pray this Hon'ble Court to pass orders that this undertaking affidavit should not be put against the officials from enforcing the forest laws if there are any violations of the same made by the Civil Revision Petitioner and his men or agents.*

16. In such circumstances, this Court finds that no purpose would be served in attaching the movables of the office of the forest department. Therefore, the order of attachment is set aside. However, considering the fact that Government is vicariously responsible for the action of the individual officers, this Court is imposing a penalty of Rs. 25,000/- upon the forest department to be paid to the first respondent herein within a period of twelve weeks from the date of receipt of copy of this order.

17. The forest department is at liberty to initiate appropriate proceedings under the Act as against the first respondent herein if they are so advised. In case, if such an action is initiated, the observations made in these proceedings will not affect the right of either parties.



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18. With the above said observations, this civil revision petition stands allowed. No costs. Consequently, connected civil miscellaneous petition also stands closed.

**11.03.2025**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes  
nst  
To  
The Principal District Munsif Court,  
Kuzhithurai.



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**R.VIJAYAKUMAR, J.**

nst

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