

E.Narashimalu Vs. E.Munusamy Naidu

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Court : Chennai

Decided On : Jun-17-2013

Judge : K.Ravichandrabaabu

Appellant : E.Narashimalu

Respondent : E.Munusamy Naidu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

17. 06.2013 Coram The Hon'ble Mr. Justice K.RAVICHANDRABAABU C.R.P.(NPD) No.2234 of 2012 and M.P.No.1 of 2012 1. E.Narashimalu 2. Smt.Venkattamma (Died) .. Petitioners Vs. E. Munusamy Naidu .. Respondent Civil Revision Petition filed against the order dated 27.4.2012 made in E.P.No.5 of 2011 in O.S.No.77 of 2007 on the file of the District Munsif at Pallipattu. For Petitioners : Mr.M.V.Muralidaran For Respondent : Mr.S.Parthasarathy Senior Counsel for M/s.G.Jermiah

ORDER

This Civil Revision Petition is filed against an order made in E.P.No.5 of 2011 in O.S.No.77 of 2007 dated 27.4.2012 on the file of the District Munsif Court at Pallipattu whereby the execution petition filed by the respondent herein, for arrest of the petitioner, who is the judgment debtor therein for disobedience of the decree, came to be allowed.

2. The petitioner herein suffered a decree in O.S.No.77 of 2007 on the file of the Distict Munsif Court, Pallipattu in a suit for declaration and for permanent injunction. The respondent herein filed E.P.No.5 of 2011 under Order 21 Rule 32 CPC by contending that the petitioner had disobeyed the decree wilfully and therefore he must be detained in the Civil Prison as he has not allowed the decree holder to enjoy the fruits of the decree. The said application was supported by an affidavit filed by the decree holder in which it is stated that the first judgement debtor viz., the petitioner herein is not allowing the decree holder to enjoy his portion of his house as per his convenience and he is wilfully disobeying the terms of compromise and the court orders. Thus, by saying so, the above execution petition came to be filed. The petitioner filed a counter and stated that he has preferred an appeal against the judgment and decree of the trial Court and he never violated the decree and consequently requested for dismissal of the E.P. The Court below after considering both the pleadings allowed the execution petition by holding that Exs.A3 and A4 police complaints, marked by the respondent herein, prove the violation of the decree.

3. Heard the learned counsel appearing for the petitioner and Mr.S.Parthasarathy, learned Senior Counsel appearing for the respondent.

4. It is seen that in O.S.No.77 of 2007 , a compromise decree came to be passed on 15.2.2010. The complaint of the respondent herein as the plaintiff is that the petitioners have violated the compromise decree and they wilfully disobeyed the same by not allowing him to enjoy the fruits of the decree. Based on such contention, the plaintiff filed the execution petition in E.P.No.5 of 2011. A perusal of the said execution petition along with the affidavit filed in support of the same does not indicate any factual details with dates and events as to when and how such violation or disobedience had taken place. Except vaguely saying that the decree was disobeyed, no specific averment was made to show that the petitioners have violated the compromise decree. On the other hand, it is the categorical contention of the petitioners that they have not violated the decree. When there is a specific denial, it is for the respondent/ plaintiff to prove before the Court below that there was violation of the decree by adducing material evidence to show such violation. Unfortunately, the Court below has relied on Exs.A3 and

A4 police complaints given by the respondent herein, which are dated 14.8.2011 and 27.6.2011 and admittedly came into existence after filing the execution petition dated 2.12.2010. Therefore, those two complaints filed before the police after filing the execution petition, ought not to have been taken into consideration by the Court below. But the fact remains that those materials were taken into consideration seriously by the Court below to come to the conclusion that there was a violation of the decree. Even if we take that those two complaints were made earlier to the filing of the Execution Petition, still mere filing of the complaint is not sufficient to prove disobedience unless it is established before the Court below that in pursuance to the said complaints, some action was taken against the petitioners herein. At any event, as those two complaints were admittedly made subsequent to the filing of the E.P, the Court below ought not to have taken into consideration of the same. Apart from this, there is no other finding by the Court below to show that there is violation of the decree as on the date of filing of the execution petition. Therefore, considering all the facts and circumstances, I am of the view that the order passed by the Court below in allowing the execution petition in E.P.No.5 of 2011 is not correct, valid and sustainable in law. Hence, the petitioner is entitled to succeed in this Civil Revision Petition.

5. At this juncture, learned Senior Counsel for the respondent submitted that allowing of the Civil Revision petition should not stand in the way of the decree holder in filing the execution petition, if there is any future violation of the decree by the petitioner herein. It is needless to say that the decree holder is entitled to execute such decree so long as the same is not stayed by the competent forum and is not barred by limitation.

6. Accordingly, the Civil Revision Petition is allowed and the order of the Court below is set aside. Consequently, the connected M.P is closed. No costs. krr To
The District Munsif Pallipattu

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