

Prema Vs. the State

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Court : Chennai

Decided On : Sep-23-2013

Judge : S.Manikumar

Appellant : Prema

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE:

23. 09.2013 CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR
W.P.No.6059 of 2013 and M.P.No.1 of 2013 Prema ... Petitioner ..Vs.. The State
by:

1. The Junior Electricity Engineer, E&P / TNEB, Guruvarajapet, Arakkonam Taluk,
Vellore District.

2. The Assistant Executive Engineer, E&P / TNEB, Gurvarajapet, Arakkonam
Taluk, Vellore District.

3. Ranjini 4. Pappi 5. Thara ... Respondents [R3 to R5 impleaded as per order
dated 12.09.2013 by SMKJ in MP3/13 in WP605913]. Prayer: This Writ Petition is
filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, to
call for the records of the 1st respondent impugned letter
No.E.NPO/E&P/Guru.Pet/V.A.Ko.Ka/No.183/ 2012 dated 10.01.2013. [prayer

amended as per Order dated 20.03.2013 by KVJ in M.P.No.2/13 in W.P.No.6059/13]. For Petitioner : Mr.K.Gangadharan for Mr.C.Chokkalingam For Respondents : Mr.G.Vasudevan (For R1 & R2) Mr.A.Gowthaman (For R3 to R5)

ORDER

Record of proceedings shows that on 12.09.2013, there was no representation on behalf of the petitioner. On 16.09.2013, a representation was made for adjournment. When the matter was listed on 17.09.2013, there was no representation for the petitioner. On 18.09.2013, when the writ petition was listed under the caption 'for dismissal', a representation was made, on behalf of the learned counsel for the petitioner for adjournment. Hence, the matter stood adjourned to this date. Today, one Mr.Gangadharan, a learned counsel representing the counsel for the petitioner, seeks for an adjournment. Since, the petitioner has been continuously taking adjournment, through some other counsel, not on record and having regard to the objections raised by the 3rd respondent, as regards, the relief sought for, in this writ petition, the matter is being disposed of on merits.

2. According to the petitioner, she has put up a construction in Block No.36/8 and electricity service connection No.272, has been granted. She received a letter No.E.N.PO/E&P/Guru.pet/V.A./KO.KA/No.183/2012 dated 10.01.2013, from the Junior Engineer, E&P, TNEB, Vellore District, the 1st respondent herein, to co-operate for disconnection of the electricity service connection, stating that a judgment has been rendered by the civil Court. It is the case of the petitioner that on receipt of the letter she had approached, the 1st respondent and explained him stating that the property belongs to her. A similar letter dated 04.03.2013, has been sent by the 1st respondent. According to the petitioner, she has been in possession and enjoyment of the property from 1990 and that she is entitled for supply of electricity. In these circumstances, the petitioner has come forward, for a mandamus directing the 1st respondent not to disconnect the electricity service connection No.272, at Block No.36/8, Sekkumedu Street, Perumalrajpet Village, Arakkonam Taluk, Vellore District.

3. The Assistant Executive Engineer, E&P, TNEB, Guruvarajapet, Arakkonam Taluk, Vellore District, the 2nd respondent herein, in his counter affidavit has submitted that one Mrs.Ranjani and two others have got a decree against the petitioner in O.S.No.120 of 2002 dated 31.07.2018 from the learned District Munsif, Sholinghur, for demolition and mandatory injunction for disconnecting the electricity connection No.272 in Survey No.36/8. According to the 2nd respondent, the petitioner has suppressed the above said fact. He has further submitted that on receipt of the copy of the judgment and decree, in the abovesaid suit, a notice was sought to be served. But the petitioner refused to receive the tapal and therefore, the same was pasted on the door [S.F.no.36/8]. in the presence of the Panchayat President, Permalrajpet, and the concerned Village Administrative Officer, Permalrajpet. The 2nd respondent has further submitted that since the present writ petition is pending, electricity service connection has not been disconnected.

4. Pending disposal of the writ petition, Ranjani and two others, have been impleaded as respondents 3 to 5, vide order made in M.P.No.3 of 2013. Mr.A.Gouthaman, learned counsel appearing for the respondents 3 to 5, on the basis of the documents enclosed in the typed set of papers filed by the above respondents, submitted that there were several litigations in respect of the subject matter of the property in S.No.38/6, Sekkumedu Street, Perumalrajpet Village, Arakkonam Taluk, Vellore District and that the civil court has granted a decree for declaration and injunction. Referring to the judgment and decree in O.S.No.120 of 2002, dated 31.07.2008, learned counsel for the respondents submitted that the writ petitioner, Prema, is the 2nd defendant in the suit. Junior Engineer, (O&M), TNEB, Guruvarajpet, Vellore District and the Superintending Engineer, TNEB, Vellore Electricity Distribution Circle, Gandhi Nagar, Vellore, are the defendants 3 and 4, in the above suit.

5. Learned counsel for the private respondents further submitted that in respect of the property in S.No.38/6, the above suit has been filed for declaration and for a mandatory injunction. The schedule of the property is as follows: ".A-Schedule In Vellore District, Arakkonam Taluk, Perumal Rajupet Village in Gramanatham S.F.No.36/8, a sit measuring 60 ft., east west and 105 ft., north south bounded by

Nadaipathai and Debbi Kuppaiah Chetty & Vacant Plot on the east, Plaintiffs house and backyard on the West, Chekkumottu Street on the North, Peria Munisami, Venkatrayalu Chetty Vagayara and Krishnaveniammal Dry lands on the south. 'B' Schedule In Vellore District, Arakkonam Taluk, Perumal Rajupet Village, in Gramanatham S.F.No.36/8, a site measuring about 15 feet, east west and about 30 feet, north south and a thatched house thereon, with an electric service connection thereon, and the same is bounded by plaintiff A-schedule property on the east and south. Plaintiff's house and its backyard on the west, Chekkumottu Street, on the north plaintiff B-schedule forms part of plaintiff A-schedule.

6. Vide judgment and decree dated 31.07.2008, the learned District Munsif, Shonlinger, Vellore District, has ordered as follows: ".jPu;g;ghiz 1/ tHf;Fiu 'gp' gl;oay; brhj;J thjpfSf;F ghj;jpag;gl;lbgd tpsk;g[if bra;J jPu;g;ghizaplg;gLfpwJ/ 2/ tHf;Fiu 'gp' ml;ltizr; brhj;jpy; cs;s Tiu tPl;il 1. 2 gpupthjpf; 3 khj fhyj;jpw;Fs; ,oj;J mfw;wp fhypaplr; RthjPd;ij thjpf; trk; xg;gilf;f ntz;Lbkd braYWj;Jf;fl;lis gpwg;gpj;J jPu;g;ghizaplg;gLfpwJ/ 3/ tHf;Fiu 'gp' ml;ltiz Tiu tPl;oy; bghUj;jg;gl;Ls;s kpd; ,izg;ig 3. 4 gpupthjpf; 3 khj fhyj;jpw;Fs; Jz;oj;J.

mfw;wpl ntz;Lbkd braYWj;Jf;fl;lis gpwg;gf;fg;gLfpwJ/ 4/ tHf;fpd; jd;ik kw;Wk; NH;epiyiaf; fUj;jpw; bfhz;L thjpapd; tHf;fpd; bryt[j; bjhif U:/1279/75?.ida[k;. gpupthjpfspd tHf;fpd; bryt[j; bjhif U:.885/00?.ida[k; mtutu;fns Vw;Wf; bfhs;s ntz;Lbkd cj;jutplg;gLfpwJ/ ". The translated version of the above is as follows: ".DECREE1 The decree is passed by declaring that the plaintiff 'B' schedule property belongs to the plaintiff.

2. The decree is passed by passing an order of mandatory injunction, directing the defendants 1 and 2 to demolish and remove the thatched house in the plaintiff 'B' schedule property, within 3 months and to handover the vacant possession of the property to the plaintiffs.

3. An order of mandatory injunction is passed directing the defendants 3 and 4 to sever and remove the electric service connection, which has been installed in the thatched house in the plaintiff 'B' schedule property, within 3 months.

4. Taking into consideration, the nature and the circumstances of the case, it is ordered that the cost of the suit of the plaintiff amounting to Rs.1279.75p and the cost of the suit of the defendant amounting to Rs.885.00 shall be borne by them respectively."

7. Being aggrieved by the same, Kannayiram and Prema, defendants 1 and 2 in the suit O.S.No.120 of 2002, have filed A.S.No.70 of 2008 on the file of the learned Subordinate Judge, Ranipet, Vellore District. After considering the rival submissions and the material on record, the appellate court has confirmed the decision and accordingly dismissed the appeal.

8. Execution petition No.16 of 2011 has been filed on the file of the learned District Munsif, Sholingur, Vellore District. As there were objections, E.A.No.9 of 2013 has been filed to break open the door of the E.P. Schedule thatched house and to execute the warrant. Perusal of the order dated 18.01.2013, shows that when execution was sought for, daughter of the judgment debtor had locked the door and threatened the Amin and Police, by pouring kerosene on her body. Thereafter, the Execution Application has been adjourned. Material on record further discloses that when another person claiming a share of the property has filed a suit for partition in O.S.No.143 of 2012 on the file of the learned District Munsif, Sholingur, the respondents 3 to 5 have approached this Court, under Article 227 of the constitution of India, to strike off the plaint and in CRP.No.761 of 2013, it has been brought to the notice of this Court that it is the fifth round of litigation in respect of the same property. Earlier in O.S.No.655 of 1990, one Mr.Govindaraj is the defendant, in which a declaratory decree has been passed in favour of the grandfather of the respondents 3 to 5. Now one of the daughters of Govindaraj, who had suffered a declaratory has come up with the present suit. Having regard to the above background, this Court vide order in M.P.No.1 of 2013 in CRP PD.No.761 of 2013, dated 07.03.2013, has granted stay of all further proceedings in O.S.No.143 of 2012 on the file of the District Munsif Court, Sholingur.

9. Thus, material on record further shows that the writ petitioner, has suffered a decree of declaration and mandatory injunction. The operative portion of the judgment of the learned District Munsif, Sholingur, Vellore District in O.S.No.120

of 2002, is as follows: ".16/ tHf;Fiu 'gp' gl;oay; brhj;J thjpfSf;F ghj;jpag;gl;lajd tpsk;g[if bra;Jk;. tHf;Fiu 'gp' ml;ltizr; brhj;jpy; cs;s Tiu tPl;il 1. 2 gpupthjpf; 3 khj fhyj;jpw;Fs; ,oj;J mfw;wp fhypalr; RthjPdij thjpf; trk; xg;gilf;f ntz;Lbkd braYWj;Jf;fl;lis gpwg;gpj;J tHf;Fiu 'gp' ml;ltiz Tiu tPl;oy; bghUj;jg;gl;Ls;s kpd; ,izg;ig 3. 4 gpupthjpf; 3 khj fhyj;jpw;Fs; Jz;oj;J.

mfw;wpl ntz;Lbkd braYWj;Jf;fl;lis gpwg;gf;fg;gLfpwJ/ tHf;fpd; jd;ik kw;Wk; NH;epiyiaf; fUj;jpw; bfhz;Ljug;gpdu;fs; mtutu; bryit mtutu;fns Vw;Wf ntz;Lbkd cj;jutplg;gLfpwJ/". The translated version of the above is as follows: ".It is hereby ordered declaring that the plaint-'B' schedule property belongs to the plaintiff, by passing an order of mandatory injunction directing the defendants 1 and 2 to demolish and remove the thatched house in the plaint 'B' schedule property and to hand over the vacant possession of the property to the plaintiffs and by passing an order of mandatory injunction directing the defendants 3 and 4 to sever and remove the electric service connection, which has been installed in the thatched house of the plaint 'B' schedule property, within 3 months and by taking into consideration the nature and the circumstances of the case, an order is passed that the costs of the suit shall be borne by the respective parties.".

10. In view of the said judgment and decree, which has been confirmed in Appeal Suit No.70 of 2008 dated 31.12.2009, by the learned Subordinate Judge, Ranipet, the electricity board has to execute the decree. The Junior Engineer, (O&M), TNEB, Guruvarajpet, Vellore District and the Superintending Engineer, TNEB, Vellore Electricity Distribution Circle, Gandhi Nagar, Vellore, are the parties to the suit and to the decree of declaration and mandatory injunction, and therefore, they are bound to execute the decree.

11. It is submitted by the learned counsel for the respondents 3 to 5 that there is no appeal against the judgment and decree in A.S.No.70 of 2008 dated 31.12.2009. All these facts have been conveniently suppressed by the petitioner. Moreover she has not impleaded respondents 3 to 5 in the writ petition. At their instance, now the entire facts have come to light.

12. What is sought for in this writ petition is to restrain the official respondents from disconnecting the service connection. As stated supra, execution of the decree

has been thwarted by giving threat to the officials viz., Amin and the Police, by the daughter of the judgment debtor, by pouring kerosine. When the petitioner has suppressed the material facts, she is not entitled to any equitable remedy. Reference can be made to the following decisions of the Supreme Court. (i) In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC120 the Supreme Court held as follows: ".12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D) ".When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression clean hands is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318:

2. Bos & P270, which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

14. In *Halsburys Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms: 1303. He who seeks equity must do equity. In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to

give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed. * * *

1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim he who has committed iniquity shall not have equity, and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design. The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits. (ii) In *Udayami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, reported in 2008 (1) SCC560 at Paragraph 16, held as follows: ".15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In *Advocate General, State of Bihar v. M/s. Madhya Deh Khair Industries and Anr.* [1980 (3) SC311 this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.".

13. Ferris on the law of extraordinary legal remedies, para 109, has explained, as to when a mandamus could be issued. "Mandamus is an extraordinary legal

remedy with which equity has nothing to do, and in consideration of which no equitable rights or principles can be taken into consideration except solely for the purpose of determining whether, in the exercise of legal discretion, the writ should issue. Mandamus, has been described as a hard and fast writ, an unreasonable writ, a cast-iron writ, the right arm of the court, the exponent of judicial power, an inflexible peremptory command to do a particular thing therein specified without condition, limitation or terms of any kind, one of the highest writs known to law. It is an extraordinary writ because it is limited by conditions that are not applicable to an ordinary suit at law. It is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial justice where there is a clear legal right and no other adequate legal remedy."

14. In *Corpus Juris Secundum* [Vol.55, pp.85-87]., it is observed that the primary purpose of a writ of mandamus is to protect an established right and to enforce a corresponding imperative duty created or imposed by law. It is designated to promote justice. It will not lie to create or establish a legal right but to enforce one which has already been established. Mandamus is properly invoked to remedy rights that lack assistance or wrongs that need assistance.

15. In *Halsbury's Laws of England* [4th Edn., Vol. I, para 89, p.111]., it is stated that the purpose of mandamus is to ".remedy the defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where, although there is an alternative remedy yet that mode of redress is less convenient, beneficial and effectual."

16. Mandamus is issued to prevent disorder, from failure of justice. Mandamus is issued to compel the authorities to perform public law duties and not to prohibit them. What is sought for in this writ petition, in a way is to prohibit them from discharging their public duties. Relief sought for is with an improper motive, i.e., preventing the authorities from adhering to the civil court decree.

17. What is sought for in this writ petition is to prevent the authorities, from performing their duties, as per the mandatory decree, S.MANIKUMAR,J., is granted against them. As stated supra, judgment in A.S.No.70 of 2008, has

reached finality. In effect, mandamus sought for is to nullify a decree. Mandamus cannot be issued to restrain the authorities from enforcing a civil decree, which is impermissible in law. For the reasons stated supra, the petitioner is not entitled to the remedy sought for in the writ petition. Hence, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. 23.09.2013
Index: Yes Internet : Yes
To 1. The Junior Electricity Engineer, E&P / TNEB, Guruvarajapet, Arakkonam Taluk, Vellore District.

2. The Assistant Executive Engineer, E&P / TNEB, Gurvarajapet, Arakkonam Taluk, Vellore District. W.P.No.6059 of 2013

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