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Muniappan Vs. Sundaram

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Court : Chennai

Decided On : Jul-04-2014

Judge : R.Karuppiah

Appellant : Muniappan

Respondent : Sundaram

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 04.07.2014 CORAM THE HON'BLE Mr.JUSTICE R.KARUPPIAH C.R.P.No.3656 of 2009 Muniappan ..Petitioner /versus 1.Sundaram 2.Lakshmi 3.R.Gopal 4.R.Kannan ..Respondents Prayer Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 06.08.2009 made in E.P.No.36 of 2008 on the file of the Subordinate Court, Rasipuram.

For Petitioner :Ms.P.T.Asha for M/s Sarvabhuman Associates For Respondents :Mr.R.Subramanian for R2 to R4 R1- Notice served No appearance ------

ORDER
The revision petitioner/decree holder has filed this revision petition against the order dated 06.08.2009 made in E.P.No.36 of 2008 on the file of the Subordiante Court, Rasipuram.

2.The revision petitioner/plaintiff has filed a suit in O.S.No.312 of 2005 and sought for the relief of declaration and permanent injunction.

The trial Court has passed a decree and judgment dated 02.08.2007 in which, rejected the prayer for declaration, but granted the relief of permanent injunction as against all the respondents/defendants.

All the respondents/defendants in the above said suit have not preferred any appeal against the judgment and decree passed by the trial Court.

3.The revision petitioner/plaintiff has filed an execution petition in R.E.P.No.36 of 2008 under Order 21, Rule 32 CPC in which, it is stated that the respondents 1 to 4 in the above said execution petition/defendants 1 to 4 have violated the above said decree and judgment and they trespassed into the property and still they are in possession and therefore, prayed for to send civil prison by issuing warrant.

4.The second respondent herein/second defendant has filed a separate counter.

The fourth respondent/third defendant has filed a counter and the other respondents/Defendants 1 and 4 adopted the counter of the fourth respondent/third defendant.

5.In the counter, it is clearly admitted that the second respondent/second defendant residing the suit property after her father's death but the other respondents/Defendants 1,3 and 4 are residing other places, not residing in the suit property.

6.Before the Executing Court, on the side of the revision petitioner/plaintiff, two witnesses were examined as PW1 and PW2.

On the side of the respondents/defendants, two witnesses were examined as RW1 and RW2 and marked three documents as Exs.R1 to R3.

On the side of the Court, one document was marked as Ex.C1 as Court document and also one document was marked through witness as witness document.

7.The Executing Court has considered the above said oral and documentary evidence and finally, held that from the pleadings in the counter and also from the evidence of RW1 itself, it is proved that the second respondent/second defendant is living in the suit property, inspite of permanent injunction was granted in favour

of the revision petitioner/plaintiff.

But, the Executing Court has dismissing the execution petition on the ground that the second respondent/second defendant has not willfully disobeyed the decree passed against her and the other respondents 1,3 and 4 also have not violated the permanent injunction granted against them.

Aggrieved over the dismissal order passed by the Executing Court, the revision petitioner/plaintiff has preferred this revision petition.

8.Learned counsel appearing for the revision petitioner/plaintiff submitted that the trial Court has granted permanent injunction against all the respondents herein/Defendants 1 to 4, but as against the relief of permanent injunction granted by the trial Court, all the respondents/Defendants 1 to 4 have trespassed into the suit property and all the respondents/Defendants 1 to 4 are disobeyed the order of the tiral Court and therefore, prayed for to send to civil prison.

9.The leaned counsel appearing for the respondents/ Defendants submitted that the second respondent/second defendant is living in the suit property, after her father's death and the roof was damaged and therefore, by using plastic cover in the roof and she is living in the suit property and therefore, it is not willful violation of the decree.

The learned counsel further submitted that the revision petitioner/plaintiff is not in possession of the suit property and therefore, there is no question for restraining the revision petitioner/plaintiff by the respondents/Defendants.

Further, the learned counsel appearing for the respondents/defendants 1 to 4 submitted that the fiRs.respondent/fiRs.defendant is residing at Samayapuram, the third respondent/third defendant is residing at Namagiri pettai and the fourth respondent/fourth defendant is residing at Rasipuram and therefore, the above said respondents have not disobeyed the decree and judgment passed by the trial Court.

The learned counsel appearing for the respondents/defendants further pointed out that since the revision petitioner/plaintiff has not proved that the second

respondent is willfully disobeyed the decree and judgment of the trial Court, the Execution Petition is not maintainable as against the second respondent also as rightly held by the Executing Court.

10.Per contra, the learned counsel appearing for the revision petitioner/plaintiff submitted that in the counter itself admitted by the respondents/defendant that the second respondent/second defendant is still living in the suit property, inspite of permanent injunction granted by the trial Court, but the Executing Court has wrongly held that the second defendant has not willfully disobeyed the judgment and decree.

Therefore, the above said finding is not correct.

11.The counter filed by the second respondent/second defendant in R.E.P.No.36 of 2008, in which it is stated as follows: ///// kDr;brhj;jpy; ,e;j vjph;kDjhuupd; fzth; fhykhdjw;F gpd;dpl;L ,e;j vjph;kDjhuh; kDr;brhj;jpy; ,Ue;j tPl;oy; FoapUe;J mDgtpj;J te;jhu;/ ,g;ghy; kDr;brhj;jpy; ,Ue;j t PL rpu!;jhfptpl;lJ.nkw;Tiu ,oe;J tpGe;Jtpl;lJ.rpu!;jhd Fl;o Rtuhf ,Uf;Fk; nkw;go Rtw;wpd; k PJ gpsh!;of; gLjhit nghl;L mjd; moapy; j';fp FoapUe;J mDgtpj;J ,e;j vjph;kDjhuu; kpft[k; fc&;l $Ptdk; bra;J tUfpwhu;/ nkw;go Rtw;wpd; nky; nkw;Tiu mikf;f kDjhuu; jil bra;J tUfpwhu;/@ 12.The counter filed by the fourth respondent/fourth defendant and the same was adopted by the other respondents 1 and 3/defendants 1 and 3, in which para 4 reads as under: 4.kDr; brhj;jpy; ,e;j vjph;kDjhuUila bgw;nwhh;fs; FoapUe;J mDgtpj;J te;jhh;fs;/ ,e;j vjph;kDjhuhpd; jfg;gdhh; fhykhdjpw;F gpd;dpl;L2; vjph;kDjhuh; kDr; brhj;jpy; FoapUe;J mDgtpj;J te;J ,g;ghy; kDr;brhj;jpy; ,Ue;j t PL rpu!;jhfptpl;lJ.rpu!;jhd Fl;o Rtuhf ,Uf;Fk; ic& Rtw;wpd; kPJ2; vjph;kDjhuh; gpsh!;of; gLjhit nghl;L mjd; moapy; j';fp FoapUe;J mDgtpj;J kpft[k; fc&;l $Ptdk; bra;J tUfpwhu;/@ 13.The trial Court has after considered the both sides oral and documentary evidence, finally observed in para 9 of the judgment, which reads as follows:- 9.jhthr; brhj;jpy; 2k; vjph;kDjhuh; FoapUe;J tUtjhf vjph;kDjhuh;fs; jug;gpy; jhf;fy; bra;ag;gl;l vjpUiuapYk; kw;Wk; v/rh/1 kw;Wk; 2d; tha;bkhHp rhl;rpaj;jpYk; brhy;yg;gl;Ls;sJ.2k; vjph;kDjhuh; jhthr; brhj;jpy; mike;j tPl;oy; FoapUg;gjhf vjpUiu jhf;fy; bra;J tpl;ljhnyh my;yJ mJ bghWj;J tha;bkhHp rhl;rpakspj;J tpl;ljhnyh me;j xU fhuzj;jpd; mog;gilapnyna 2k; vjph;kDjhuh; ePjpkd;w jPh;g;gpiz mtkjpj;J tpl;lhh; vd

Kot[bra;a ,ayhJ.mnj nghy; 1.3.4 vjph;kDjhuh;fs;.

jhthr; brhj;jpy; my;yJ jhthr; brhj;jpd; mUfhikapy; FoapUe;J tutpy;iy/ 1.3.4 vjph;kDjhuh;fs; ntW ntW ,l';fspy; jdpj;jdpahf FoapUe;J tUfpd;whh;fs;/ 1.3.4 vjph;kDjhuh;fs; jhthr; brhj;ij mDgtk; bra;tjw;F ,ila{W bra;jhh;fs; vd;w Tw;W jf;f rhl;rpa';fs; K:yk; kDjhuh; jug;gpy; epU:gpf;fg;gltpy;iy/@ 14.A careful reading of the averments made in the counter filed by the respondents/defendants and also findings of the Executing Court clearly revealed that the second respondent herein/second defendant is residing in the suit property inspite of the relief of permanent injunction granted in favour of the revision petitioner/plaintiff.

Therefore, the second respondent/second defendant disobeyed the decree and judgment of the trial Court.

Further, the above said contention of the revision petitioner/plaintiff has also been accepted by the respondents/defendants.

Inspite of it, the Executing Court has held that eventhough the second respondent/second defendant is living in the suit property as against the relief of permanent injunction in favour of the revision petitioner, it is not amount to disobey the Court order and finally, dismissed the above said petition.

The above said findings of the Executing Court is absolutely illegal and perveRs.findings.

Therefore, the second respondent/second defendant in the above said execution petition has willfullly disobeyed the judgment and decree passed by the trial Court.

As rightly pointed by the learned counsel appearing for the revision petitioner the second respondent herein/second defendant is to be sent to civil prison as prayed for in the execution petition.

15.The other respondents 1, 3 and 4/defendants 1,3 and 4 have clearly stated in their counter that they are not living in the suit property and living in other places.

But, they have admitted that the second respondent/second defendant alone is living in the suit property.

On the side of the revision petitioner/plaintiff has also not proved by reliable oral and documentary evidence that respondents 1,3 and 4/defendants 1,3 and 4 are willfully disobeyed the decree and judgment passed by the trial Court.

The Executing Court has also held that respondents 1,3 and 4 are not living in the suit property and they are living separately in another place.

Therefore, the relief sought for by the revision petitioner/plaintiff against respondents 1,3 and 4/defendants 1,2 and 4 cannot be granted.

16.In the result, the civil revision petition is partly allowed and the second respondent/second defendant is to be arrested and sent to the civil prison.

Therefore, the Executing Court is directed to issue warrant for arrest of the second respondent/second defendant and send to the civil prison on payment of necessary expenses by the revision petitioner/plaintiff as per the Rules and the revision petition is dismissed as against respondents 1,3 and 4/defendants 1,3 and 4.

No costs.

04.07.2014 ari Index:Yes/No Internet:Yes/No To The Subordiante Court, Rasipuram.

R.KARUPPIAH, J.

ari order made in C.R.P.No.3656 of 2009 04.07.2014

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