

Ramakrishna Naidu Vs. Sethuraman,

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Court : Chennai

Decided On : Oct-15-2004

Reported in : AIR2005Mad108

Judge : S. Sardar Zackria Hussain, J.

Acts : Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Civil Revision Petition (NPD) No. 2870 of 2001

Appellant : Ramakrishna Naidu

Respondent : Sethuraman, ; Mathrubootham and Sekar

Advocate for Def. : Murthy & Vasan

Advocate for Pet/Ap. : S. Senthilnathan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. The second defendant in O.S. No.572 of 1980 on the file of the Court of Principal District Munsif, Thirukovilur, is the revision petitioner in this Civil Revision Petition. This revision is directed against the order in E.P. No. 342 of 1995 dated

31.7.2001 on the file of the Court of Principal District Munsif, Thirukovilur, filed under Order 21 Rule XXXII C.P.C., as per which the defendant, viz., revision petitioner, was ordered to be arrested for having committed contempt of Court.

2. The respondents 1 to 3, along with their mother Pattammal, filed O.S.No.572 of 1980 for declaration, and permanent injunction and alternatively for possession in respect of the suit properties claiming that the suit properties were purchased by their father Ramasamy Iyer, benami in the name of his mother Sornambal as per sale deeds Exs.A.1 and A.2 marked during the trial of the said suit. The suit was resisted by the first defendant, paternal aunt of the plaintiffs 1 to 3, claiming that she is the owner of the property in view of the fact that it is she, who purchased the suit properties benami in the name of her mother Sornambal and so she is entitled to the enjoyment of the suit properties, in any event, on the death of her mother Sornambal, as her legal heir. The suit was also resisted by her that she was in enjoyment of the suit properties by paying kist, etc, through Ramasamy Iyer and on his death, through his sons plaintiffs 1 to 3. Further, it is her case that she sold the suit properties to the second defendant, namely, revision petitioner, as per sale deed dated 02.5.1980 and thereafter, it is the second defendant, who is in possession and enjoyment of the suit properties.

3. The trial Court, considering the evidence adduced on either side, not accepting the case of the plaintiff, ultimately, dismissed the suit. The plaintiffs preferred appeal in A.S.No.164 of 1983 and the learned Sub-ordinate Judge, Villuppuram, allowed the appeal as per judgment dated 16.8.1985 recording finding in favour of the plaintiffs holding that the plaintiffs have been in possession of the suit properties. It appears that the said judgment has become final. Thereafter, the plaintiffs filed E.P.No.342 of 1995 under Order 21 Rule XXXII C.P.C. on the file of the District Munsif, Thirukovilur, for contempt of Court. The defendant filed counter disputing the decree for declaration and permanent injunction granted by the learned Sub-ordinate Judge, Villuppuram, in respect of the suit properties in favour of the plaintiffs. The above said E.P. was filed stating that the defendant is cultivating the land by trespassing into the suit properties despite the judgement of Court and as such, the defendant committed contempt of Court. The Executing Court dismissed the said petition as per order dated 08.8.1996 accepting the case

of the second defendant that even before the decree was passed in the suit as per judgment in O.S.No.572 of 1980, the second defendant has been in possession and enjoyment of the suit properties and he continues to be so. Despite such decree granted in the appeal in A.S.No.164 of 1983, the Executing Court dismissed the petition against which the plaintiffs 1 to 3 filed C.R.P.No.723 of 1997 and as per order dated 30.10.1998, this Court while allowing the revision, remitted the matter back to the Executing Court and after such remand, the Executing Court as per order dated 31.7.2001, allowed the petition finding that the second defendant trespassed into the suit properties and as such, disobeyed the decree granted in appeal in A.S.No.164 of 1983 and, therefore, committed contempt of Court. In that view, the Executing Court ordered arrest of the second defendant, which is challenged in this revision.

4. Heard the learned counsel appearing for the revision petitioner/second defendant as well as the learned counsel appearing for the respondents/plaintiffs.

5. The learned counsel for the revision petitioner submitted that the suit filed for declaration, permanent injunction and for alternatively for possession was dismissed by the trial Court and decree was granted for permanent injunction only in appeal in A.S.No.164 of 1983 and that there is no evidence that the respondents were in possession of the suit properties after dismissal of the suit. He submitted that the arrest of the revision petitioner ordered by the Executing Court for having committed contempt of Court is not proper. Further, according to the learned counsel, since there is no decree for mandatory injunction in favour of the respondents, the E.P. filed under Order 21 Rule XXXII C.P.C. itself is not proper.

6. The learned counsel for the revision petitioner, in support of his contention, relied on the decision of this Court in **ONDIPUDUR WEAVERS CO-OPERATIVE PRODUCTION AND SALES SOCIETY LTD., REPRESENTED BY ITS SPECIAL OFFICER, AND OTHERS v. VELUMANI AND OTHERS** 1977 M.L.J.(II) 19 in which this Court has held thus:

'It is a well established rule that while the machinery and remedy provided under Order 21, Rule 32 (1) of the Code of Civil Procedure would cover cases of both

prohibitory and mandatory injunction, sub-rule (5) of that rule will apply only to cases of mandatory injunction because it speaks of a positive act to be done by the judgment-debtor under the decree and wherever there is no mandatory injunction directing the judgment-debtor to do a positive act, the remedy open to a decree holder is to file a fresh suit seeking a mandatory injunction.'

7. Learned counsel also relied on the decision of this Court in ARJUNA GOUNDER v. GOVINDARAJU REDDIAR 1990 M.L.J. (II) 411 wherein it has been held as follows:

'The provisions of Order 21, Rule 32, Civil Procedure Code extremely penal. When the provisions are so severe against the judgment-debtor, it is the duty of the Court to construe the rule strictly and the Court which passed orders under the Rule must act strictly in accordance with the provisions of the rule. Thus under sub-rule(1) of Rule 32, the requirement which should be satisfied is that the judgment-debtor having had opportunity to obey the decree has wilfully failed to obey it. Unless and until the Court gives a finding to that effect, the Court is not entitled to pass any order of attachment or detention in Civil Prison. The Court is of the view that the jurisdiction of the Court to pass an order of attachment or detention in Civil Prison arises only after giving a finding that the judgment-debtor has wilfully disobeyed the decree after having had an opportunity to obey the same. In the absence of such a finding, any order passed by the Court granting attachment or directing detention of the judgment-debtor in Civil Prison is a nullity.'

8. Learned counsel for the respondents/plaintiffs contended that inasmuch as the appeal in A.S.No.164 of 1983 was allowed granting relief of declaration, permanent injunction as sought for by the plaintiffs in respect of the suit properties reversing the judgment of the trial Court and recording finding that the plaintiffs are entitled to the suit properties, the respondents/plaintiffs 1 to 3 and their mother, fourth plaintiff, alone are entitled to the suit properties on the death of their father Ramasamy Iyer, who was working in the Land and Survey Department and who purchased the suit properties for his benefit, benami in the name of their mother Sornambal. Thereafter, the plaintiffs have been in possession and enjoyment of the suit properties by paying kist, etc. He further submitted that disbelieving the

claim of the first defendant, paternal aunt of the plaintiffs, that she purchased the suit properties in the name of her mother Sornambal for her benefit and that she was in possession and enjoyment of the suit properties by paying kist, etc., through her brother Ramasamy Iyer, father of plaintiffs, and thereafter, on his death, through the plaintiffs 1 to 3, and the claim of the second defendant that after the purchase of the suit properties from the first defendant, he has been in possession of the same, the appellate Court allowed the appeal preferred by the plaintiffs and granted the reliefs in their favour. The said judgment has become final and the respondents have been in possession and enjoyment of the suit properties. He submitted that the second defendant has trespassed in to the suit properties by disobeying the judgment of the Appellate Court in the appeal in A.S.No.164 of 1983 and, therefore, the respondents filed Execution Petition for ordering detention of the revision petitioner in Civil Prison. The learned counsel further submitted that though initially E.P.No.342 of 1995 filed by the respondents was dismissed, as per the order of this Court in C.R.P.No.723 of 1997, the matter was remitted back to the Executing Court, which, after remand of the matter, ordered arrest of the revision petitioner.

9. The first appellate Court in A.S.No.164 of 1983, considering all aspects and the evidence adduced by both parties, recorded finding as set out above and decreed the suit for declaration and for permanent injunction restraining the defendants 1 and 2 from interfering with the possession of the plaintiffs. As per Order 21 Rule 32 C.P.C., the decree for injunction can be enforced against person and the Court can order detention of the judgment-debtor in the Civil Prison. The judgment relied on by the learned counsel for the revision petitioner reported in 1977 M.L.J. (II) 19 is not applicable to the facts of the case since they relate to the decree for mandatory injunction. In that case, decree for permanent injunction was granted in respect of the suit properties and after decree, it was found that the suit pathway is covered with thorny bushes and even in the said case, it was directed to remove the thorny shrubs, if it was found to be an obstruction for which purpose an Advocate Commissioner was also appointed by the Executing Court. The other decision of this Court cited by the learned counsel for the revision petitioner reported in 1990 M.L.J. (II) 411 is also not applicable to the facts of this case. Inasmuch as the respondents/plaintiffs have been in possession of the suit

properties by paying kist, etc., the appellate Court granted the decree of permanent injunction as sought for by the plaintiffs. The Executing Court, considering all these facts, rightly ordered arrest of the revision petitioner/second defendant in Civil Prison under Order 21, Rule 32 C.P.C. Such order does not call for any interference being not erroneous and the same is confirmed.

10. In the result, the Civil Revision Petition is dismissed and the order of arrest of the revision petitioner passed by the Executing Court in E.P.No.342 of 1995 by order dated 31.7.2001 is confirmed. No costs. Consequently, C.M.P.No.15356 of 2001 is closed.

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