

Manimaran Vs. Gandhimathi and

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Court : Chennai

Decided On : Sep-15-2009

Reported in : (2009)8MLJ477

Judge : S. Palanivelu, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 21, Rules 97, 97(1), 97(2), 98, 98(2), 99 and 101

Appeal No. : C.R.P. NPD No. 2192 of 2009 and M.P. No. 1 of 2009

Appellant : Manimaran

Respondent : Gandhimathi And; Lakshmi

Advocate for Def. : B. Dyaneswaran, Adv.

Advocate for Pet/Ap. : R. Marudhachalamurthy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S. Palanivelu, J.

1. The petitioner is third party. The first respondent filed a suit in O.S. No. 32 of 2004 on the file of the Sub Court, Dharapuram for specific performance of contract

on the strength of agreement for sale executed by the second respondent who is none other than mother of this petitioner. The suit was decreed and the first respondent levied execution proceedings and got sale deed executed in his favour through Court. Thereafter, he filed E.P. No. 76 of 2007 for delivery of the properties through Court. While the Court bailiff went to the suit property for delivery, this petitioner obstructed delivery and he filed an application under Order 21 Rule 97 r/w Section 151 CPC requesting the Court to exclude 'B' Schedule property from the 'A' Schedule property which is the suit property. It is his claim that on the strength of an unregistered partition, the 'B' Schedule property fell to his share in the year 2002 and from the said period, he has been in possession of the property. He also produced xerox copies of the unregistered partition deed dated 30.06.2002, the xerox copies of Family Card and also the Voters Identity Card.

2. The learned Subordinate Judge, Dharapuram rejected the application without taking the same on file by observing that the petition is not maintainable in law and mere possession shall not entertain him to make obstruction when his mother entered into the contract with respect to the property standing in her name exclusively. Hence, the petitioner has come forward with this revision petition before this Court.

3. This Court perused the xerox copy of unregistered partition deed dated 30.06.2002 and also the family card issued in the names of this petitioner and his wife Dhanalakshmi for the years 2005 to 2009. It is issued for Door No. 42/A which is the property mentioned in 'B' Schedule in the obstruction petition. The validity, enforceability and admissibility of the unregistered partition deed is left open to be decided by the executing court. As far as the family card is concerned, it was issued in the year 2005 itself in the names of the petitioner and his wife. His mother's name nor brother's name are found. Copy of voters list has not been produced before this Court.

4. The learned Counsel for the petitioner would say that the family card is clinching evidence to show that both the petitioner and his wife are residing in the house bearing Door No. 42/A. He also placed reliance upon a decision of the Supreme

Court reported in : (1997) 3 SCC 694 [Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Anr.] in which Their Lordships have held that after hearing the decree holder and the obstructionist, the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, Sub-rule (2) read with Order 21, Rule 98 CPC.

5. The Apex Court has directed the executing court to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the order challenged and neither the executing court nor the High Court in revision had considered the objection of the appellant against execution on merits and that the executing court must first adjudicate upon objections of the appellant on merits under Rule 97(2) r/w Rules 101 and 98 instead of insisting upon first handing over possession and then moving of application by the appellant under Rule 99, that words 'any person' in Rule 97(1) includes such a stranger as the appellant and if the resistance or obstruction found to be unjust and unwarranted, then the same would be removed by the Court.

6. The learned Counsel for the first respondent Mr.B.Dyaneswaran would place reliance upon a decision of this Court reported in : (2005) 1 MLJ 191 G. Ganesan v. Surendran in which it is observed that a petition by obstructor can be filed only if there are documents to show actual possession and without any document, such petition cannot be entertained and when there is no evidence available to prove actual possession excepting the bare statement the obstruction petition is not maintainable.

7. In yet another decision of this Court reported in (2007) 4 MLJ 485 [Jansirani and Ors. v. Loganathan and Ors.], it is held that the original documents itself is not admissible in evidence for want of stamp and registration and also as, it could not be looked into for collateral purposes.

8. In order to avail the advantages provided under Rule 97 of Order 21 CPC, the obstruction must be a just one. If the obstructionist does not project the obstruction without any just cause, his claim could not be entertained. The Court may in its discretion, even before the petition be taken on file, find out the genuineness of the claim. Sub-rule 2 to Rule 98 of Order 21 would provide that upon such a

determination, namely after the determination of questions referred to in Rule 101, the Court is satisfied with the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor or any person acting at his instigation or on his behalf to be detained in the civil prison for a term which may extend to thirty days.

9. The legal consequences to either the judgment-debtor or a third party claiming under him or any other person who puts his obstruction without 'just cause', and if the obstruction continues even after the direction of the executing Court, the Court may commit him to civil prison at the instance of the applicant. When the subsequent provision namely Rule 98 provides for such a relief to be provided to the decree holder for the possession of immovable property or any purchaser, when a person comes forward with a petition under Rule 97, he has to necessarily show 'just cause'. If the effort taken by such person is to drag on the proceedings or preventing the execution petitioner from enjoying the fruits of the product of the execution proceedings, then in the considered view of this Court, such effort should be nipped in the bud. If no material is produced at the time of filing of the application by such person to show his lawful possession in the property, then his claim could be curtailed at the threshold. Vexatious and frivolous litigations shall not be allowed to occupy the space of the Courts and to waste the valuable judicial time. When Sub-rule 2 to Rule 98 of Order 21 is read in juxta position to Rule 97, an irresistible conclusion could be arrived at, that the petition under Rule 97 should be a bonafide one and if it is presented containing malafide wishes of the person filing it, there is no embargo for the Court to reject the same.

10. Adverting to the facts of the present case, the suit was filed in the year 2004 on the strength of a sale agreement executed on 09.06.2003. Execution Proceedings were levied in E.P. No. 65 of 2006 and the sale deed was also executed by the Court in accordance with the decree and subsequently the

present E.P. has been filed in the year 2007. Only one material shown before this Court is xerox copy of Family Card which is for the years 2005-2009. After filing of the suit and the suit was decreed on 10.01.2005, the Family Card has been obtained only to delay the execution of the decree. In this context, the contention that the documents have been created to defraud the decree holder is acceptable. Such attempts could not be encouraged by the Courts. It is far fetched contention that the mother had already come forward to partition the properties in the year 2002 by means of a registered partition deed. A perusal of the xerox copy of unregistered partition deed would show that by virtue of this partition deed, the alleged partition was effected. Hence, it requires registration.

11. The endeavours of the petitioner is not based upon any justifiable cause and it is observed that without any 'just cause', he as approached the Court. Only with a view to see the decree holder defeated in executing his decree lawfully, there had been creation of records subsequent to the filing of the suit and passing of the decree. Hence, this Court does not find any infirmity in the orders challenged before this Court either factually or legally. No valid ground has been made out to interfere with the order impugned, the same deserves to be confirmed and it is accordingly confirmed.

12. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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