

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.32 of 2015
and M.P.No.1 of 2015

N. Gandhi

.... Petitioner

vs

N. Srinivasan

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set side the order and decree in E.P.No.1983 of 2010 in O.S.No.6190 of 2004 dated 10.10.2014 on the file of IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.D. Govinda Reddy for
Mr.C.T. Udayappan

For respondent : Mr.G. Ramadurai

ORDER

Challenging the fair and decreetal order, passed in E.P.No.1983 of 2010 in O.S.No.6190 of 2004, on the file of IX Assistant City Civil Court,

Chennai, the Judgment Debtor has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed a suit in O.S.No.6190 of 2004 for mandatory injunction, directing the defendant to remove the cemented ramp measuring 7 ft x 16 ft in front of the defendant's house i.e., "C" schedule property; for mandatory injunction, directing the defendant to reduce the height of the floor from 6 ft to 1 feet on the northern side of the defendant's property i.e., "C" schedule property; for mandatory injunction directing the defendant to reduce the height of the Drainage mouth wall from 7 feet to 2 feet in front of the "B" and "C" schedule property and for permanent injunction, restraining the defendant from repeating the said or similar encroachments or obstructions in "B" and "C" schedule properties.

3. The defendant remained absent before the trial Court. Hence the trial Court decreed the suit as prayed for on 23.12.2009. As against the judgment and decree, passed by the trial court, the defendant has not preferred any appeal or taken any steps to set aside the decree passed by the trial Court. Therefore, the judgment and decree passed in O.S.No.6190 of 2004 has become final. Pursuant to the decree passed by the trial Court, the plaintiff filed an Execution Petition in E.P.No.1983 of 2010. The Judgment Debtor filed his counter and contested the Execution Petition.

4. It is also brought to the notice of this Court by the learned counsel on either side that the Judgment Debtor filed an application in E.A.No.1209 of 2011 in E.P.No.1983 of 2010 under Sec.47 of the Civil Procedure Code. The Decree Holder filed his counter and contested the application in E.A No.1209 of 2011.

5. The Execution Court, after taking into consideration the case of both the parties, dismissed the application in E.A.No.1209 of 2011 on 10.01.2012. The Judgment Debtor has not challenged this order also. Therefore, the order passed in E.A.No.1209 of 2011 also has become final. Thereafter, the Decree Holder filed an application in I.A.No.6479 of 2011 in O.S.No.6190 of 2004 for amending the decree, which application was allowed by the trial Court on 13.3.2012. Similarly, the Decree Holder also filed an Execution Petition in E.P.No.1985 of 2010 for realising the cost of Rs.800/-. This Execution Petition was terminated on 21.10.2013 for the reason that the Judgment Debtor had paid the cost of Rs.800/-.

6. After taking into consideration the counter filed by the Judgment Debtor, the Execution Court allowed the Execution Petition on 10.10.2014. The learned counsel appearing for the petitioner submitted that the

judgment and decree passed by the trial Court is erroneous and therefore, the decree cannot be executed by the Execution Court.

7. It is settled position that the Execution Court is bound by the decree passed by the trial Court. If the decree passed by the trial Court is erroneous, the remedy available to the defendant is to file an appeal against the erroneous decree. In the case on hand, admittedly, the defendant has not challenged the judgment and decree, passed by the trial court and allowed the judgment and decree to become final.

8. Having failed to file an appeal against the decree passed in O.S.No.6190 of 2004, the defendant also filed an application in E.A.No.1209 of 2011 under Sec.47 of the Civil Procedure Code, which was also dismissed by the Execution Court and this order also has become final. Hence when this defendant had failed in his attempt to question the validity of the decree, passed by the trial Court, the said contention cannot be raised in the Execution Petition once again.

9. As already stated, the Execution Court is bound to execute the decree passed by the trial Court. Though the decree was passed in the year 2009, the Decree Holder has not got the decree executed even after a lapse

of six years.

10. It is also settled position that the Execution Court cannot go beyond the decree passed by the trial Court. The Execution Court, taking into consideration all these aspects, rightly allowed the Execution Petition .I do not find any error or irregularity in the order passed by the Execution Court in E.P.No.1983 of 2010 in O.S No.6190 of 2014 and hence the civil revision petition is liable to be dismissed as devoid of merits. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

17-11-2015

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Index:no
website:yes

Note: Issue Order copy on 19.11.2015

To

The IX Assistant City Civil Court, Chennai.

M. DURAISWAMY,J.,

sr

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