

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.3111 of 2015

ORDER:

This civil revision petition under Section 115 C.P.C. arises out of the order dated 26.06.2014 passed by the learned I Additional Junior Civil Judge, Kovvur, in E.P.No.118 of 2012 in O.S.No.61 of 2012. By the order under revision, the Executing Court dismissed the E.P. Aggrieved thereby, the decree-holder in O.S.No.61 of 2012 is before this Court.

Despite notice being served upon the respondent/judgment-debtor, he did not choose to enter appearance either in person or through learned counsel.

The petitioner/decreed-holder filed O.S.No.61 of 2012 before the learned I Additional Junior Civil Judge, Kovvur, for a permanent injunction restraining the respondent/judgment-debtor, who was the defendant therein, from trespassing into the plaint schedule property, dispossessing him or in any way interfering with his possession and enjoyment thereof. This suit was decreed by the trial Court on 26.09.2012 with costs. The subject execution petition was filed by the petitioner/decreed-holder alleging that the respondent/judgment-debtor dug a pit adjoining the southern boundary wall of the plaint schedule property so as to cause its collapse and also interfered when the compound wall construction was taken up by the petitioner/decreed-holder in the plaint schedule property. In this regard, the petitioner/decreed-holder claimed that the respondent/judgment-debtor abused him and physically assaulted him apart from preventing him from constructing the compound wall. The respondent/judgment-debtor filed a counter in the execution petition stating that he had filed a petition for getting the *ex parte* decree set aside. Insofar as the

allegations levelled against him were concerned, he stated that the decree-holder filed the E.P. with false averments and that he had violated the Mediators out of Court Agreement. Stating so, he prayed for dismissal of the E.P.

The Executing Court took note of the evidence of the petitioner/decreed-holder as PW.1 and another witness, being his brother-in-law's employee, as PW.2 and opined that the evidence of PW.2 was not credible as he was an interested witness. Further, while dealing with the petitioner/decreed-holder's contention that the respondent/ judgment-debtor had dug a pit adjoining the southern boundary wall, the Executing Court observed that the respondent/judgment-debtor did not adduce any evidence that he had dug such a pit. Stating so, the Executing Court held that the petitioner/decreed-holder has failed to establish his case and accordingly dismissed the E.P.

Sri M.R.S.Srinivas, learned counsel for the petitioner/decreed-holder, placed before this Court a copy of the deposition of the respondent/judgment-debtor as RW.1. As rightly pointed out by the learned counsel, the respondent/judgment-debtor stated various new facts therein which were not mentioned in his counter. That apart, there were several contradictions therein which needed to be taken into consideration by the Executing Court.

On the one hand the respondent/judgment-debtor stated in his chief examination as under:

‘It is not true to suggest that I have dug a canal (bodi) on the northern extremity of the southern compound wall of PW.1.’

He also stated to the effect that if a Commissioner inspected the locality, there would be no pit and drainage. He also admitted that the petitioner/decreed-holder started construction of the compound wall on

19.12.2012, but denied the suggestion that at that time, he abused the petitioner/decreed-holder in filthy language and also threatened him that he would see his end and prevented him from taking up the construction work. He then stated that as on that date he was not present at the site. This denial followed by an improvement, in terms of his not being present at the site, taken in conjunction with the fact that he did not even make such a denial in his counter-affidavit necessarily had to be taken into consideration by the Executing Court. Further, as the respondent/judgment-debtor himself invited inspection of the site for verification as to whether a pit had been dug or not, the Executing Court ought not to have dealt with the matter as if it was a suit. As the petitioner/decreed-holder had already succeeded in the suit and was seeking execution thereof, the Executing Court ought to have been mindful of this fact and dealt with the matter accordingly. Sri M.R.S.Srinivas, learned counsel, informs this Court that the set aside petition filed by the respondent/judgment-debtor has also been dismissed. The approach of the Executing Court was therefore not proper and justified.

The order under revision is therefore set aside and the Execution petition is restored to the file of the learned I Additional Junior Civil Judge, Kovvur, for consideration afresh in accordance with law.

The Civil Revision Petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:29.10.2015

GJ