



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.669 of 2016 (NPD)

and

C.M.P. (MD) .3112 of 2016

Ravishankar

..Petitioner

Vs.

1.S.Vanniyan

2.M.Sankaralingam

..Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.01.2016 made in E.A.No.148 of 2014 in E.P.No.45 of 2013 in O.S.No.171 of 2010 on the file of the District Munsif Court, Tiruchendur at Thoothukudi District.

For Petitioners : Mr.S.R.Anbarasu

ORDER

This memorandum of Civil Revision Petition has been filed against the fair and decretal order dated 29.01.2016 made in E.A.No.148 of 2014 in E.P.No.45 of 2013 in O.S.No.171 of 2010 on the file of the District Munsif Court, Tiruchendur at Thoothukudi District.

2. The petitioner is the first defendant and the respondents are the plaintiffs in the Suit in O.S.No.171 of 2010. The plaintiffs filed the above said Suit for mandatory injunction, directing the defendants to remove the shed lying in front of the plaintiffs' mut situated in Sannathi Street in Tiruchendur, belongs to Tirunelveli Senkunthar Muthaliar Pathamadaiyar Vamsathar Community. The Suit was decreed after contest. The respondents/plaintiffs filed E.P.No.45 of 2013 to implement the decree dated 24.07.2013. The petitioner filed E.A.No.149 of 2014 under Section 47 CPC, claiming that the decree passed in the suit is in-executable on the ground that only Town Panchayat has power to remove the encroachment as per Section 182 of Tamil Nadu District Municipalities Act, 1920. The respondents opposed the same. The learned Judge considering all the facts and materials on record and judgment relied on by counsel for parties dismissed the application. Against that order the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner contended that the learned Judge failed to consider the scope of Section 47 CPC in proper perspective and failed to see that as per Section 182 of Tamil Nadu District Municipalities Act, 1920, only the concerned Town Panchayat or Municipality has the power to remove the encroachment. The learned Judge also failed to consider the judgment relied on by the learned counsel for the petitioner and therefore prayed for allowing this Civil Revision Petition.



4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. From the records, it is seen that the respondents filed Suit in O.S.No.171 of 2010 and decree has been passed, directing the petitioner to remove the shed, put up by him, in the suit property within two months from the date of decree. The petitioner did not file any appeal against the said decree. Therefore, this Court can not go beyond the decree and reconsider the issue on merits. In the evidence let in before the execution Court, the petitioner admitted the encroachment and that he has not filed any appeal against the decree. In the circumstances, the order of the learned Judge does not warrant any interference by this Court.

6. After arguments, the learned counsel for the petitioner submitted that the petitioner will remove the shed put up by him in the suit property within a period of 45 days and he further submitted that the petitioner will file an affidavit of undertaking to that effect before the execution court. If affidavit of undertaking is filed, the learned District Munsif, Tiruchendur, is directed to consider the said application and pass orders in accordance with law.

7. With the above direction, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS)

Madurai Bench of Madras High Court,
Madurai-23.

To

The District Munsif Court, Tiruchendur.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.S.R.Anbarasu, Advocate in SR.16631

C.R.P(MD)No.669 of 2016(NPD)

and

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24.03.2016

pjl

PBK/GSV-PM/SAR-I 24/03/2016 ::2P-4C:: (IT)