



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(PD) (MD).No.81 of 2016

WEB COPY

G. Manikandan : Revision Petitioner/Respondent/1st Defendant

Vs.

S.M. Manikam : Respondent/Petitiner/Plaintiff

Civil Revision Petition is filed under Article 227 of the constitution of India to set aside the docket order passed by the learned Principal District Munsif, Madurai in I.A.No.132 of 2015 in O.S.No.757 of 2014 dated 10.04.2015.

For Petitioner : Mr. R.Mohamed Rajapdheen

For Caveator : Mr. N. Chandran

ORDER

This Civil Revision Petition is filed against the docket order passed in I.A.No.132 of 2015 in O.S.No.757 of 2014, dated 10.04.2015, on the file of the learned Principal District Munsif, Madurai.

2. The revision petitioner is the first defendant in O.S.No.110 of 2014 (re-numbered as O.S.No.757 of 2014). The respondent / plaintiff filed O.S.No.757 of 2014 for mandatory injunction to demolish the superstructure put up by the petitioner in property in question and for permanent injunction restraining the petitioner and other defendants from interfering with the possession and construction in the property in question. Along with suit he has filed I.A.No.322 of 2015 for ad interim injunction to restrain the respondent from constructing any superstructure in the said property. The said application was ordered granting ad interim injunction restraining the respondent from constructing any superstructure in the property in question. The petitioner filed CMA against that order. The said CMA was numbered, only as per the orders of this Court passed in C.R.P.No.2450 of 2014, dated 27.11.2014. The respondent filed I.A.No.596 of 2014 (re-numbered as I.A.No.132 of 2015) in O.S.No.757 of 2014 for mandatory injunction to remove the superstructure put up by the petitioner in property in question. He also filed I.A.No.661 of 2014 (re-numbered as I.A.No.133 of 2015) for execution of the order of the interim injunction with Police protection. Both the I.A.Nos. 132 and 133 of 2015 were allowed on 10.04.2015. The said order was passed exparte, as the respondent did not file any counter. Thereafter, the petitioner filed I.A.Nos.377 and 378 of 2015 to condone the delay in filing set aside the ex parte and to set aside the ex parte order, dated



10.04.2015. But, the said applications were dismissed. Against the order passed in I.A.No.132 of 2015, the present Civil Revision is filed.

3. The learned counsel appearing for the petitioner contended that without giving any opportunity to the petitioner, court officials executed, even before the order passed in I.A.No.132 of 2015, could be drafted by the Registry. The respondent in collusion with Court official demolished the superstructure in spite of the objection made by the petitioner. The learned Trial Judge, ordered interim mandatory injunction, pending suit. The said order is contrary to law. Further, the learned Judge failed to consider the totality of the case before ordering interim order. The learned counsel for the petitioner submitted that when the petition to set aside ex parte mandatory injunction was sought to be served on the counsel for the respondent, the counsel refused to receive the same and therefore, there was delay in filing application to set aside the ex parte order. The Central Nazir without any authority ordered execution of mandatory injunction by directing senior bailiff to demolish the superstructure put up by petitioner. The learned counsel for the petitioner submitted that order of mandatory injunction can be executed only by filing execution petition and not by order of Central Nazir. Without following procedure, superstructure put up by the petitioner was demolished.

4. The learned counsel appearing for the Caveator filed counter affidavit and stated that the petition mentioned property belongs to one Pandi. After his death, his son Murugesan and Sathya Moorthy become owners of the property. From the legal heirs, one Ketharnath purchased the property by Registered Power deed in the year 1997 and 1998. In turn, the respondent / plaintiff purchased the property on 21.02.2014, by registered sale deed for valuable consideration.

5. It is further stated that the respondent filed I.A.No.322 of 2014 in O.S.No.110 of 2014 for interim injunction and the same has been allowed on 25.06.2014. The respondent has title over the suit property and supported by documentary evidence to prove his possession. Disobeying the order passed by the lower Court, the petitioner is making construction in un-lawful manner. After obtaining the encumbrance certificate only he has purchased the property on 21.02.2014. Further, O.S.No.757 of 2014 is pending before the Principal District Munsif, Madurai and the trial has not commenced. In such circumstances, the petitioner could not seek relief to restore, because the petitioner is an encroacher, not having title and ownership upon the property. Further the petitioner has filed different petitions for same cause of action and the C.M.A.No.19 of 2015 filed before the Principal Subordinate Judge, Madurai and the same has been posted on 29.02.2016 for further hearings. In the meanwhile, he has

filed another suit in O.S.No.315 of 2014 before the Principal District Munsif, Madurai. Hence, the revision may be dismissed on the ground that the petitioner is an encroacher and he cannot get remedy before this Court.

6. The learned counsel appearing for the Caveator further submitted that the trial Court has granted interim injunction on 26.06.2014 in I.A.No.322 of 2014, restraining the petitioner not to encroach and put up the superstructure. In spite of the same, the petitioner continued construction in the land belonging to the respondent. In the circumstances, the respondent filed I.A.No.132 of 2015 for mandatory injunction and also filed I.A.No.133 of 2015 to execute the order of interim injunction, dated 26.06.2014. Even though the petitioner was given opportunity to put forth his objection, he did not file any counter disputing the claim of the respondent. The learned trial Judge after considering all the materials only allowed the I.A.No.132 of 2015 on 10.04.2015 and granted mandatory injunction. The respondent has executed the same as per law. There is no irregularity in order granting mandatory injunction and executing order of mandatory injunction and therefore, the Civil Revision Petition is not maintainable and prayed for dismissal of this CRP.

7. I have heard the leaned counsel appearing for the petitioner and perused the materials available on record.

8. From the materials on record it is seen that an injunction was granted after hearing both the counsel for petitioner and respondent. In spite of injunction granted by the Court, petitioner proceeded with construction. In the circumstances, the respondent filed I.A.No.132 of 2015 for mandatory injunction to demolish constructions put up by petitioner in contravention of injunction order granted by Court. The petitioner was granted time for filing counter. From 01.09.2014 onwards petitioner was granted time for filing counter. On 04.03.2015, 12.03.2015, 19.03.2015 and 10.04.2015, the petition was posted for filing counter finally. On 10.04.2015, no counter was filed and no representation was made on behalf of the petitioner. The matter was passed over and at 3.00 p.m the learned Judge allowed the application granting mandatory injunction. In the circumstances, it cannot be said that without giving opportunity to the petitioner, the impugned order was passed.

9. The Judgments relied on by learned counsel for the petitioner relates to interim injunction granted to the applicant without notice to the other party. In the present case, injunction was granted after hearing both counsel for petitioner as well as respondent. The contention of the respondent is that the petitioner is disobeying the order of injunction, put up



superstructure. In the circumstances only, the respondent filed application for mandatory injunction. In the said application, notice was given to the petitioner and he took number of adjournments for filing counter. Only after giving ample opportunity to the petitioner to put forth his case the impugned order of mandatory injunction was granted. The said order was executed as per the procedure. The contention of learned counsel that even without drafting the order, the official in the Central Nazir Office in collusion with respondent, executed order is untenable, as the petitioner has not substantiated the same by any acceptable material. Similar contention of the learned counsel for the petitioner that the order of mandatory injunction can be implemented only by filing execution petition, is baseless. The learned counsel for the petitioner has not pointed out any provision, which provides implementation of injunction or mandatory injunction only by filing execution petition.

10. Similarly, the contention of the learned counsel for the petitioner that the counsel for the respondent refused to receive the application to set aside the ex parte order of mandatory injunction is also not substantiated by any material. The learned counsel for the petitioner should have sent the application by registered post with acknowledgement due to the learned counsel for the petitioner or ought to have filed a memo in the concerned Court and ought to have brought to the notice of learned Judge about refusal of counsel for respondent to receive application for setting aside the ex parte order of mandatory injunction. Having failed to do so, it is not open to the petitioner to raise this issue before this Court. In the circumstances, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

11. In the result the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO.Dept)

/True copy/

Sub Assistant Registrar

Madurai Bench of Madras High Court,
Madurai.

Trp

To

The Principal District Munsif, Madurai.

+1 cc to Mr.R.Mohamed Rajapdheen, Advocate, SR No.21252

+1 cc to Mr.N.Chadran, Advocate, SR No.12394

RG.GSV-PM 24.03.2016 4P/4C