

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.750 of 2014
and M.P.No.1 of 2014

Balakrishnan

...Petitioner

Vs

Vasantha

...Respondent

Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 27.01.2014 made in E.P.No.1676 of 2013 in O.S.No.9338 of 2006 on the file of the learned X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.D.Nellaiappan
For Respondent : Mr.S.N.Narasimhulu

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 27.01.2014 made in E.P.No.1676 of 2013 in O.S.No.9338 of 2006 on the file of the learned X Assistant Judge, City Civil Court, Chennai.

2.The respondent as a plaintiff filed a suit in O.S.No.9338 of 2006 for injunction restraining the defendant/judgment debtor not to interfere with the construction of compound wall around the suit property. The suit was decreed, against which, the petitioner/defendant has preferred an appeal in A.S.No.562 of 2008, which was also dismissed in the year 2009. Thereafter, the respondent has filed E.P.No.1676 of 2013 under Order 21 Rule 32 C.P.C. to arrest the judgment debtor for disobedience of the decree, which was allowed and arrest was ordered. Challenging the same, the present revision is preferred by the petitioner/defendant.

3.Learned counsel for the petitioner would submit that the Executing Court without considering that what is nature of disobedience, ordered for arrest. Further, no oral and documentary evidence has been let in. He would further submit that during pendency of the appeal, entire compound wall has been constructed. So there is no disobedience that too wilful disobedience. In the execution petition itself, it was not stated that what is disobedience. Hence, he prays for allowing this revision.

4.Learned counsel for the respondent would submit that in the grounds of appeal itself, the petitioner has stated that only about 2 feet is yet to be constructed. Hence, the Executing Court after considering all the aspects, has rightly ordered for arrest. Thus, he prays for dismissal of this revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The respondent as a plaintiff filed the suit for injunction restraining the defendant from interfering with the construction of compound on all the four sides of the suit property as per patta and sale deed. After contest, the suit was decreed, against which, the petitioner/judgment debtor has preferred A.S.No.562 of 2008. The said appeal was dismissed in the year 2009. Thereafter, the respondent has filed the execution petition and the same was allowed and arrest was ordered on 27.01.2014.

7.Now it is appropriate to extract the following averment made in the execution petition:

"In column:9,

"issue warrant for arrest and put the judgment debtor in civil prison on the ground that the judgment debtor disobeying the judgment and decree passed by this Court",

In column No.12,

"to issue a warrant for arrest the judgment debtor and put him in the civil prison under Order 21 Rule 37 and 38 of C.P.C. " "

8.The above averments reveal that the respondent has not stated as to how the petitioner has disobeyed the decree passed in the suit. Furthermore, no oral evidence has been let in to prove that when did the respondent put up construction and when did the petitioner wilfully prevent the respondent to put up construction. In the execution petition, no averment regarding the above aspect has been mentioned. So it is the duty of the respondent to prove that the petitioner has disobeyed the order of the Court that too wilful disobedience. It is pertinent to note that no supporting affidavit has been filed in the execution petition.

9. Furthermore, in the order, it was stated that complaint has been lodged by the petitioner before the Velacheri police station on 25.07.2011. But no scrap of paper has been filed to show that after passing of decree, the petitioner herein has attempted to prevent the respondent to put up the compound wall.

10. Considering the aforesaid circumstances of the case, I am of the view that the Executing Court has committed an error in passing order for arrest without considering, on which date, the petitioner has prevented the respondent to put up the compound wall and committed disobedience of the order and whether it amounts to wilful disobedience. Therefore, the fair and decreetal order passed by the Executing Court is hereby set aside and the execution petition is dismissed. Consequently, the revision is allowed.

11. In the result, the Civil Revision Petition stands allowed and the execution petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2017

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R.MALA,J.

kj

To

X Assistant Judge, City Civil Court, Chennai.

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