

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.2185 of 2009

M.P.No.1 of 2009

R.Veeraiah

.. Petitioner

Vs.

M.Govindasamy

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decreetal order dated 15.06.2009 made in E.P.No.18 of 2009 in O.S.No.112 of 2005 on the file of District Munsif Court, Mannargudi.

For Petitioner : Mr.V.Venkatasamy

For Respondent : M/s.P.T.Ramadevi

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 15.06.2009 made in E.P.No.18 of 2009 in O.S.No.112 of 2005 on the file of District Munsif Court, Mannargudi.

2. The petitioner/judgment debtor is the defendant and the respondent/decreed holder is the plaintiff in O.S.No.112 of 2005 on the file of the District Munsif Court, Mannargudi. The respondent filed a suit for mandatory injunction to demolish the wall mentioned in the schedule and deliver the vacant possession, failing which demolish the wall through the order of the court. The suit was decreed on 31.10.2008, granting 3 months time to the petitioner to demolish the wall and deliver the vacant possession. However, The petitioner did not demolish the wall. The respondent filed E.P.No.18 of 2002 to execute the decree. The Petitioner did not appear in the Execution Proceedings and he was set exparte.

3. The learned Judge by order dated 15.06.2009 ordered to demolish the wall with the help of a Village Administrative Officer and Police and subsequently ordered to break open and demolish and to deliver the vacant possession to the respondent on 16.09.2009.

4. As against the said order dated 21.07.2009 made in E.P.No.18 of 2002, petitioner has come out with the present civil revision petition.

5. Heard the learned Counsel for both parties and perused the materials on record.

6. According to the petitioner, the Execution Court failed to consider the earlier compromise decree passed in O.S.No. 41 of 2001. The respondent had demolished the old house and constructed a new house leaving two feet passage from the disputed wall. If walls are demolished entire house of the petitioner will be collapsed. This contention has no merits. The petitioner contended that there was a compromise decree in O.S.No.41 of 2001.

7. The petitioner ought to have produced the said compromise decree in the suit and ought to have obtained favourable orders. Having suffered the decree directing him to demolish the wall, the petitioner is not entitled to seek dismissal of E.P.No.18 of 2002 in O.S.No.112 of 2005 based on the earlier compromise decree in O.S.No.41 of 2001. It is well settled that the Executing Court cannot go beyond the decree passed by the competent Civil Court. In view of the same, the civil revision petition is devoid of merits and liable to be dismissed.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ggi/gsa

To

The District Munsif Court,
Mannargudi.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.P.T.Rama Devi,Advocate SR.No.48530

C.R.P.No.2185 of 2009
M.P.No.1 of 2009

PVS (CO)
GN (06/10/2017)

<https://hcservices.ecourts.gov.in/hcservices/>