

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1.6.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.1221 of 2016

Kithar Mohamed

.. Petitioner/Decree Holder

Vs.

1. T.S.Mohamed Ali

2 A.M.Mohamed Shali

3 Mohamed Rabick

4 V.A.K.Jeyllani

5 V.A.Noor Mohammed .. Respondents/Judgment Debtors

This Civil revision is filed under Section 115 of C.P.C. to set aside the orders passed by the learned Principal District Munsif, Coimbatore, dated 12.10.2015 in E.P.No.77of 2010 in O.S.No.1759 of 1998.

For Petitioner : Mr.Karthik Asath for
Mr.V.Nicholas

For Respondents : Mr.C.D.Sugumar

ORDER

The facts of this case is as follows:

Petitioner herein filed the suit in O.S.No.1759 of 1998 on the file of the Principal District Munsif, Coimbatore for permanent injunction

restraining the defendants/respondents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property by encroaching the land by means of granting permanent injunction.

2 Mr.Karthik Asath, the learned counsel for the revision petitioner vehemently contended that the respondent disobeyed the decree passed by the Court below. Further, the learned counsel submitted that after contest, the suit was decreed in favour of the revision petitioner on 9.7.2003. The revision petitioner filed E.P.No.77 of 2010 against the respondents for violating the judgment and decree by interfering possession and enjoyment of the suit property and prayed for detention of the defendants/respondents in civil prison to execute the decree, under Order 21 Rule 32 of C.P.C.

3 Per contra, the learned counsel for the respondents/ Judgment debtors would submit that the respondents have filed detailed counter affidavit in the said E.P. In the aforesaid counter affidavit, the respondents have specifically pleaded that the property mentioned in the E.P. is handed over to the Kurichi Panchayat, the petition mentioned property is a road as per the approval granted in

L.P./R.(CN) No.78/1980 and 493/1998. The petitioner did not hand over the said land to the Panchayat. Subsequently, the respondent welfare association of that layout handed over the land for road to the Panchayat by way of gift deed. The aforesaid land is allocated for the public purpose and for public utility. Therefore, the allegations of the petitioner are baseless without any substance. Further, in view of the above said fact, the petitioner has no legal right for the land mentioned in the petition. Hence, the order passed by the Court below is perfectly in order and there is no error or illegality in the order passed by the Court below. Therefore, the revision is liable to be dismissed.

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

5 Admittedly, the petitioner has filed the suit in O.S.No.1759 of 1998 for permanent injunction against the defendants/ respondents in the suit. The suit was decreed on 9.7.2003. Thereafter, the petitioner has filed the present E.P.No. 77

of 2010 under Order 21 Rule 32 C.P.C. to detain the respondents in civil prison for violating the judgment and decree passed on 9.7.2003. On perusal of the petition filed before the E.P. Court, the revision petitioner without furnishing the details in the affidavit sought to detain the respondents in civil prison for violating the judgment and decree. When there is non-compliance of the decree/Court order, the parties concerned should approach the Court by furnishing details with regard to non-compliance of the decree/order for alleged violation of decree. The allegation found in the petition is vague, there is no specific allegation and no materials has been placed before this Court to establish that the respondents had disobeyed the decree. It is specific case of the respondents that the schedule mentioned property had been handed over by the resident welfare association to the Panchayat. Pursuant to the handing over of the above mentioned property, Panchayat laid road and the same is being used by public. The said fact has not been disputed by the petitioner by filing any reply affidavit before the Execution Court.

6 By considering the above said fact, the Court below has

rightly dismissed the petition filed by the revision petitioner for the reason that the petition has been filed with malafide intention and to make unlawful gain and extortion. As rightly pointed out by the counsel for the respondent that the petition is not maintainable unless specific allegation made in the affidavit that the respondents violated the order passed by the Court below. Therefore, this Court has no hesitation to reject the contention of the petitioner to interfere with the order passed by the Court below. Hence, there is no legal error or illegality in the order passed by the Court below.

7. Accordingly, the civil revision is dismissed. However, there is no order as to costs.

1.6.2017

D.KRISHNAKUMAR. J.,

vaan

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

vaan

To

The Principal District Munsif, Coimbatore

C.R.P.(NPD) No.1221 of 2016

Dated: 1.6.2017

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