

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3863 of 2016
and
C.M.P.No.19668 of 2016

Jayavel

... Petitioner

vs.

K.Kanchanadevi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.11.2016 passed by the learned District Judge, District Court-II, Kanchipuram in I.A.No.168 of 2016 in O.S.No.21 of 2014.

For Petitioner : Mr.S.Udayakumar
For Respondents : Mr.K.Surendranath

ORDER

The second defendant, in the suit filed by the respondent/plaintiff, aggrieved by the order passed by the Court below in the application filed under Order 39 Rule 2A of the Code of Civil Procedure directing him to remove the construction put up by him, has preferred the above revision.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. The suit is filed by the respondent/plaintiff in O.S.No.21 of 2014 for declaration, partition and other reliefs. An injunction application was also filed with respect to C scheduled property. The plaintiff had claimed 5/8 th share in the said property. The plaintiff had contended that after the order of interim injunction, the petitioner/second defendant had put up the construction in the said C schedule property by constructing a bath room. It is admitted by the defendant that the bath room was put up by him. However, it is also stated that it was prior to the order of injunction passed by this court. As the order of injunction was granted on 16.03.2016 and when the same was in force, the second defendant seem to have put up the construction. Therefore, the plaintiff has filed an application in I.A.No.168 of 2016 seeking for arrest and detention of the second defendant for the act of wilful disobedience of the order. The said application was allowed and aggrieved by the same, the present revision is filed.

4. It is contended by the learned counsel for the revision petitioner/second defendant that the revision petitioner's family did not have a bathroom and toilet and therefore, the same being a necessary amenity for a home, he had put up the bathroom and the toilet in the said portion. It is also stated that after completion of the building only the interim order was granted by the trial court and immediately thereafter the construction is said to have been stopped. However, the Court below has passed the order of removal of the said construction of the bathroom on or before 25.11.2016.

5. The revision petitioner/second defendant though admitted that the construction has been completed, had submitted that it was not in wilful disobedience of the order of the Court. The construction only being a bathroom and toilet, which is a basic amenity for a home, it was completed and that he may be permitted to retain the same.

6. However, it is pointed out by the learned counsel for the respondent/plaintiff that the submission of the revision petitioner/second defendant is incorrect as the said construction is not made within his house, but opposite to the house of the respondent/plaintiff and it is across the road. It is therefore,

contended by the respondent/plaintiff that the intention of the revision petitioner/second defendant is only to disobey the order of the Court and disrespect the direction given by the Court.

7. The learned counsel for the revision petitioner/second defendant also fairly submitted that the construction is there, but however refused to remove the same. The learned counsel for the revision petitioner/second defendant, after much deliberation and persuasion, as the parties could not see eye to eye, even offered that the said portion where the construction has been made, may be even allotted to the respondent/plaintiff.

8. Heard both sides and perused the records.

9. Inasmuch as the respondent/plaintiff has made out violation of the order passed by the Court below, I do not find any reason to interfere with the same and set aside the order. However, considering the hardship that has been caused to the respondent/plaintiff, this Court is of the view that the revision petitioner/second defendant should be put on terms.

10. Accordingly, the revision petitioner/second defendant is

directed to pay a sum of Rs.10,000/- [Rupees ten thousand only] directly to the respondent/plaintiff, within a period of four weeks from the date of receipt of a copy of this order and it also further clarified that the revision petitioner should not indulge in such activities viz., violating the orders passed by the Courts in future and he should not also make any alteration or put up any other structure in the name of repair or modification, pending disposal of the suit and if any such violation is made, the same will be seriously viewed.

11. With the above observation, this civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

06.01.2017

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Index: Yes/No

Internet: yes

To

The District Judge, District Court-II, Kanchipuram

PUSHPA SATHYANARAYANA.J

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