

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.5468 of 2016

ORDER:

Judgment Debtor No.2/defendant No.2 is the revision petitioner. The respondent in the C.R.P. filed O.S.No.354 of 2001 for mandatory injunction directing the defendants to restore his staircase as shown in the plaint plan, in default thereof, the same be executed through process of Court. On 13.07.2006, the trial Court decreed the suit and on issue No.2, the following finding is recorded.

“In the result, the suit is decreed with costs granting mandatory injunction directing the defendants to restore the plaintiff's house steps as shown in the plaint plan within three months from this date failing which the plaintiff is entitled to get the same through process of law.”

The revision petitioner challenged the Judgment and Decree in O.S.No.354 of 2001 in A.S.No.100 of 2006. On 28.07.2011, the appeal was dismissed confirming the judgment of the trial Court. The respondent filed E.P.No.138 of 2013 under Order XXI Rule 32 of the Code of Civil Procedure, 1908. The revision petitioner objected to the execution by raising objections viz., if the staircase is constructed, his doorway will be closed and he will not have access to his house from open place and public road. There is no declaration that the steps are exclusive steps of decree holder; and therefore, the execution petition is not maintainable. The decree is obtained by playing fraud, hence, the decree is defective. The schedule is not shown in the execution petition to indicate as to where the steps are to be restored, much less the measurements of the staircase are stated. The revision petitioner objects to the proposed execution for not stipulating the measurements of staircase i.e., width,

length, height etc. as unavailable. According to him, the execution petition is barred by limitation. The executing Court has taken note of these objections and framed the following point for consideration.

“Whether the Decree Holder is entitled for execution of the decree?”

After considering the factual objections and binding precedents on the Court, the E.P. is ordered as follows on 29.08.2016.

“In the result, the execution petition is allowed. The Court amin is appointed to execute the decree of mandatory injunction for restoration of steps (stair case) as shown in the plan appended to the decree, at the cost of the Decree Holder since it is specifically pleaded by the Decree Holder to bear the costs of restoration of the steps. For report call on 29.09.2016.”

Hence, the revision.

2. Mr.K.Gopal appearing for the revision petitioner substantially reiterated the objections raised in the counter filed by the revision petitioner and has further submitted by contending that uncertainty is the plea taken by the revision petitioner and in the E.P. filed for execution of mandatory injunction decree, these details are very much necessary and required. On the other hand, Mr.B.Narasimha Sarma appearing for the respondent by relying upon the plaint plan, its location vis-à-vis the location of the respondent's house and the revision petitioner's house explained that these objections are merely stated to make it appear that the decree as inexecutable. He further contends that it is not for judgment debtor to defeat the decree with these objections. He draws the attention of the Court to each and everyone of the findings recorded by the executing Court, contents that no error is pointed out against the order impugned in the revision to attract the jurisdiction of this Court. He prays for dismissing the revision.

3. The learned counsel have substantially reiterated the stand taken before the executing Court, therefore this Court has examined the findings recorded by the executing Court in this behalf. Whether the findings either on the question of factual objection or on principle law suffer from any error or illegality. The decree sought to be executed has directed the revision petitioner to construct the respondent/plaintiff's staircase. Had the revision petitioner complied with the mandatory injunction, there would not have been other difficulties which he is trying to project now. In a decree for mandatory injunction, in case of default by the defendants to obey the direction issued by the Court, the Court has given liberty to the respondent to get the mandatory decree executed through process of law. Now as there is default in performance by Judgment Debtor, the direction has been carried out through the order under revision. No exception can be taken to the findings.

4. The Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

5. As a sequel to dismissal of the C.R.P., C.R.P.M.P.No.7076 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

S.V.BHATT, J

03rd February, 2017
GHN