

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 02.04.2019**

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.1242 of 2019

and

CMP.No.8003 of 2019

Sundaram Chettiar ..Petitioner/1<sup>st</sup> Defendant

Vs

1.K.P.S.Rajganesh

2.Vaishnavi

3.Subramanian

..Respondents 1 & 2/Plaintiffs

..3<sup>rd</sup> Respondent/2<sup>nd</sup> defendant

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 13.02.2019 in R.E.P.No.124 of 2018 in O.S.No. 363 of 2017 by the learned Principal District Munsif Court, Salem.

For Petitioner : Mr.T.Ganesan

**ORDER**

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The above Civil Revision is filed challenging the order passed in E.P.No. 124 of 2018 in O.S.No. 363 of 2017, by the learned Principal District Munsif, Salem, the 1<sup>st</sup> defendants/Judgment debtor is the revision petitioner before this Court.

2 The brief facts are as follows:

The plaintiffs had filed a suit for bare injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the 'C' schedule property, which is a building shown in red colour in the Rough Sketch in the appended plan. The plaintiffs in O.S.No. 363 of 2017, would submit that when they had started work to fix the gate at entrance of their house, the same was prevented by the revision petitioner and others and despite a complaint being given to the Hasthampatty Police Station, the revision petitioner and others continued to obstruct the plaintiffs and they had physically and verbally abused them. Therefore, left with no other alternative the plaintiffs have filed the suit in O.S.No.363 of 2017. Though the defendants had filed their written statement, they choose to remain ex-parte and ultimately, the suit was decreed ex-parte and a decree for permanent injunction as prayed for is granted.

3 It is also seen that the defendants had attempted to file an application for setting aside the ex-parte decree, which was returned and not re-presented. The plaintiffs sought to have the decree executed by appointing an Advocate

Commissioner to supervise the erection of the gate at the entrance shown as the red colour marked portion in the plaint attached to the decree. The revision petitioner/judgment debtor had opposed this application by stating that the decree was only for permanent injunction and the decree holders were seeking to expand the scope of the decree by filing the instant application. Therefore, they prayed for the dismissal of the petition.

4 The learned Principal District Munsif after hearing both parties proceeded to allow the said application, stating that by preventing the plaintiffs from putting up the gate, the defendants were in effect obstructing/discharging the decree and as per the provisions of Order 21 Rule 32(5) of the Code of Civil Procedure, the Court was empowered to ensure that the decree granted, is given effect to. This order is challenged by the defendant, by way of this Civil Revision Petition. The learned counsel for the revision petitioner would make the same submissions as made in the trial Court.

5 Heard the counsel and perused the papers.

6 It is seen that the suit for permanent injunction had been filed only on account of the fact that, the defendants were interfering when the plaintiff, attempted to put up a gate in their property, which had been delineated in the plaint plan. The Court had decreed the suit as prayed for and the plaint had also formed part of the decree. Thereafter since, the 3<sup>rd</sup> respondent was once again interfering, despite there being a decree against them, the plaintiffs have come forward with the execution petition. Order 21 Rule 32(5) of the Code of Civil Procedure reads as follows:

*"Where decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree. The explanation to the said section also clearly stated that **"the Act required to be done"** covers not only prohibitory also mandatory injunctions".*

7 Therefore, the view taken by the Court below that the decree has to be executed and that the Court should ensure that the decree is given effect to and also considering the fact that Execution Court has not gone cannot go beyond the decree, the order does not suffer from any infirmity.

8 In the result, the Civil Revision Petition Stands dismissed and order passed in R.E.P.No. 124 of 2018 in O.S.No.363 of 2017 by the learned Principal District Munsif Court, Salem, dated 13.02.2019 is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

02.04.2019

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Index: Yes/No

Internet: Yes/No

Speaking order / Non-speaking order

To

The Principal District Munsif Court,  
Salem.

**P.T.ASHA, J.**

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