



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) Nos. 833 & 834 of 2019

S.Victor ... Petitioner/Decree Holder/Plaintiff
in both the petitions.

Vs.

1.Vinoth Rosariyo Joy Miranda

2.Janith Aristatil ... Respondents/Judgment Debtors
/Defendants in both the petitions.

COMMON PRAYER: These Civil Revision Petitions have been filed under Article 227 of the Constitution of India, direct to number the Execution Petitions filed in E.P.SR.Nos.3 & 4 of 2019 on the file of the District Munsif Cum Judicial Magistrate, Alangudi.

For Petitioner : Mr.N.Kamesh
in both petitions

C O M M O N O R D E R

These Civil Revision Petitions have been filed seeking a direction to the Execution Court (District Munsif Cum Judicial Magistrate), Alangudi to number the Execution Petition in E.P.SR.Nos. 3 & 4 of 2019.

2. The Petitioner/Decree Holder has filed a suit in O.S.No.63 of 2018 for permanent injunction against the respondent/Judgment Debtor. The said suit was decreed in favour of the petitioner. After passing of the decree, the respondent/Judgment Debtor had trespassed into the suit property by putting up 'L' shaped wall in the said property with the help of Hollow Block Slaps. Hence, the petitioner/Decree Holder had filed the Execution Petitions in E.P.SR.Nos.3 and 4 of 2019 for arrest of the respondent/Judgment Debtor under Order 21 Rule 32(1) C.P.C and for demolition under Order 21 Rule 32(5) C.P.C. On perusal of oral and documentary evidence, the learned District Munsif Cum Judicial Magistrate has returned the Execution Petitions, stating that the correct provisions of law has not been given. Aggrieved against the said returns, the petitioner is before this Court.



3. The grievance of the petitioner/Decree Holder is that the respondent/ Judgment Debtor has violated the decree passed by the Court below by putting up wall in the property of the petitioner/Decree Holder. He further stated that the petitioner/Decree Holder has got every right to proceed against the respondent for violation of the order passed by the Court below. In support of his contention, he relied upon the judgment of this Court reported in **2002(II) CTC 240 in the case of Kanakamma Vs.Kamalan.**

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

5.Perusal of the record discloses that without appreciating the contents of the Execution Petitions, the learned District Munsif Cum Judicial Magistrate has returned the Petitions. Therefore, this Court is of the view that the revision petitioner has made out a prima facie case to allow these revisions.

6.In view of the above, the order passed in unnumbered Execution Petitions in E.P.SR.Nos. 3 & 4 of 2019 is set aside and the learned District Munsif Cum Judicial Magistrate, Alangudi, is directed to number the Execution Petitions and proceed with the case in accordance with law.

7.With the above direction, these Civil Revision Petitions are allowed. No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Munsif Cum Judicial Magistrate, Alangudi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1CC TO MR.N.KAMESH, Advocate Sr. No. 68895

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