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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(MD)No.1624 of 2015

Ganesan ... Petitioner/Petitioner/ Plaintiff

Vs.

V.Murugan ... Respondent/Respondent/ Plaintiff

Prayer:- This Civil Revision Petition filed under Section 227 of Constitution of India, praying this Court to set aside the order passed in E.P.No.20 of 2013 in O.S.No.84 of 2009, dated 29.04.2015, on the file of the District Munsif Court, Srivaikundam.

For Petitioner : Mr.S.Meenakshi Sundaram

For Respondent : Mr.A.Sivasubramanian

ORDER

This Civil Revision Petition has been filed seeking to set aside order passed in E.P.No.20 of 2013 in O.S.No.84 of 2009, dated 29.04.2015, on the file of the District Munsif Court, Srivaikundam.

2. Originally, the petitioner filed a suit in O.S.No.84 of 2009 against the respondent herein for permanent injunction, restraining the respondent from interfering with the peaceful possession and enjoyment of the petitioner's property. After trial, the suit was decreed on 09.01.2013. After the decree, the petitioner herein filed an Execution Petition in E.P.No.20 of 2013 for punishing the respondent for disobeying the decree, dated 09.01.2013. The said execution petition was dismissed by the Execution Court. Challenging the said dismissal of the execution petition, the petitioner has filed the present revision before this Court.

3.The case of the petitioner is that the respondent's property is situated south to the petitioner's property. At the time of filing of the suit, the respondent's property was in a dilapidated condition. Subsequently, after filing of the suit, after attaining the decree, the respondent demolished his property and constructed a new building in his property. They have also encroached the petitioner's property and damaged the same. After the suit, the

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respondent damaged the North and West side walls of the petitioner's house. Therefore, the petitioner had sent a notice to the respondent and subsequently filed an execution petition for contempt before the learned District Munsif, Srivaikundam, in E.P.No.20 of 2013. The Execution Court failed to consider the case of the petitioner by relying on the Commissioner's report and dismissed the Execution Petition which necessitates the petitioner to approach by filing the present Civil Revision Petition.

4.The learned counsel for the respondent made submissions that since this Civil Revision Petition is pending from the year 2015, the same may be disposed of by this Court.

5.Heard the learned counsel on either side and perused the materials placed before this Court.

6.A perusal of the records would show that the petitioner filed a suit for permanent injunction against the respondent in O.S.No.84 of 2009 before the District Munsif Court, Srivaikundam. The suit was decreed on 09.01.2013 and subsequently, the petitioner filed an execution petition in E.P.No.20 of 2013 in O.S.No.84 of 2009. During the pendency of the Execution Petition, an Advocate Commissioner was appointed and he has also filed his Report and the same was marked as Ex.C1 and Ex.C2. Even during the pendency of the suit itself, the same Advocate Commissioner was appointed and he has also filed a report on 22.07.2011. The same Commissioner has inspected the property again for the second time and he filed a report on 25.01.2012.

7.In the Advocate Commissioner's report, he has clearly stated that he inspected and measured the petitioner's property as well as the respondent's property. When he inspected the property for the first time, he saw that the respondent's property is situated South to the petitioner's property, which was in a dilapidated condition and after the decree, when he inspected the property, he noted that in the respondent's property that is South to the petitioner's property in which the earlier dilapidated building was newly constructed by the respondent. However, the Advocate Commissioner has stated that during the pendency of the Execution Petition, when he inspected the property for the third time, there is no change in the petitioner's property. Though the petitioner has stated in his Execution Petition that the West, North and South side walls of the petitioner's house, was damaged., but the Commissioner's report does not say so. All the three walls are common walls and there is no damage or difference in the walls. The Advocate Commissioner has stated that there is no change in the petitioner's property and the petitioner has not filed any objection to the Advocate Commissioner's Report and the same was also marked. During the course of cross examination, the petitioner has admitted that all the three walls of the petitioner's property are common walls and he has also admitted that the Advocate Commissioner has stated that

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there is no change in the petitioner's property, at the time of inspection, during the execution proceedings and hence, he has not made any objection.

8.Therefore, the petitioner has not established his case that after the decree, the respondent has damaged the property of the petitioner. In the Execution Petition filed for contempt for the disobedience committed by the respondent in the decree dated 09.01.2013, the petitioner has to establish specifically that as to how the respondent had disobeyed the decreetal order. A reading of the entire materials and the deposition of the petitioner and also the Commissioner's Report, this Court is of the view that the petitioner has not established the disobedience alleged to have been committed by the respondent. Therefore, this Court finds no merit in the Civil Revision Petition and the same is liable to be dismissed.

9.Accordingly, this Civil Revision Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
1.The District Munsif, Srivaikundam.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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