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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD)No.1516 of 2017

and

C.M.P. (MD)No.8275 of 2017

Maluk Mohamed

... Petitioner

Vs.

Maria Delby

... Respondents

Prayer:- Civil Revision Petition filed under Section 115 CPC., to set aside the fair and decreetal order dated 16.03.2017 passed in E.P.No.51 of 2015, in O.S.No.65 of 2000 passed by the Principal District Munsif, Kanyakumari District at Nagercoil, by allowing this Civil Revision Petition with cost.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mr.S.C.Herold Singh

ORDER

The respondent herein has filed a suit against the petitioner / defendant for permanent injunction. The said suit was decreed on 03.02.2004. Subsequently, the respondent filed a execution petition in E.P.No.51 of 2015 before the learned Principal District Munsif, Kanyakumari at Nagercoil and the same was disposed of the petition with a direction that,

"7. At the same time, when the petitioner alleges as the respondent obstructs her usage and the respondent himself took a defence as the petitioner and her husband don't have any necessity to use the schedule property, as per the view of this Court, police protection can be ordered in enforcing the decree of permanent injunction."

Challenging the above said observation and direction, the petitioner / the defendant has filed the present revision before this Court.

2.The learned counsel for the petitioner would submit that the executing Court has given a clear finding that the respondent herein has not established the obstruction made by the petitioner herein and he cannot give a direction regarding police protection under Order 21 Rule 32(5) of CPC, and the Rule does not speak anything about police protection. Therefore, the executing Court exceeds its



jurisdiction and has given the direction regarding police protection. The order passed by the executing Court has to be set aside and the direction has to be recalled.

3.The learned counsel for the respondent would submit that the respondent has got a decree of permanent injunction and when the petitioner making obstruction, he filed a execution petition before the executing Court. Though the executing Court finds that in order to get the fruits of the decree, give the direction of police protection and nothing wrong in the order of the executing Court. Therefore, this revision petition has no merit and the same is liable to be dismissed.

4.Heard both sides and perused the records.

5.Admittedly, the respondent herein has filed the suit in O.S.No.65 of 2000 on the file of the learned Principal District Munsif, Kanyakumari at Nagercoil for permanent injunction and got the decree on 03.02.2004. Subsequently, the respondent herein filed a execution petition in E.P.No.51 of 2015 under Order 21 Rule 32(5) of CPC. Though the executing Court has disposed the petition by stating that the respondent / plaintiff has not established any obstruction as alleged in the execution petition, however, the executing Court has given the direction in Paragraph-7 of the order (stated supra). There is no necessity to give a police protection under Order 21 Rule 32(5) which does not state anything about the grant of police protection.

6.Therefore, the observation made in the order in E.P.No.51 of 2015 passed by the learned Principal District Munsif, Kanyakumari at Nagercoil, is liable to be set aside. However, the respondent herein is at liberty to file a execution petition afresh, if necessary.

7.Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif,
Kanyakumari District at Nagercoil.

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1.The Record keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.
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+1 CC to M/s.S.C.HEROLDSINGH, Advocate (SR-2121[F] dated
24/01/2022)

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