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Cont.P.No.456 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Contempt Petition No.456 of 2023

Sivanandham
S/o Sadayandi

..

Petitioner

-vs-

Mr.Tenzing Gawa
S/o Late Katak Taluk

..

Respondent

Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971 praying to punish the respondent for willful disobedience of the decree and judgment passed in O.S.No.96 of 2018 dated 19.07.2021 on the file of District Munsif cum Judicial Magistrate Court, Vanur, in the lands of the petitioner in Ayan Punjai Survey No.397/1, in Resurvey No.4/1, Kottakuppam Village, Vanur Taluk, Villupuram District.

For Petitioner :: Mr.G.Vasudevan

For Respondent :: Mr.P.Dinesh Kumar



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ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

This contempt petition is filed alleging willful disobedience of the decree and judgment passed by the District Munsif cum Judicial Magistrate Court, Vanur in O.S.No.96 of 2018 dated 19.07.2021.

2. Even in the contempt petition, the consequential prayer is also to direct the respondent to remove the compound wall, which was put up in the petitioner's land covering the suit property. The petitioner claims ownership over an extent of 28 cents out of 84 cents in Survey No.397/1, Re-survey No.4/1, Kottakuppam Village, Vanur Taluk, pursuant to the registered sale deed dated 04.07.96 executed by one Manickam. It is his case that he is in possession of the property ever since the date of purchase. The petitioner's vendor appears to have executed two other sale deeds each in respect of 28 cents and the lands conveyed in the said two sale deeds are also adjacent to the petitioner's land.

3. Stating that one of the purchasers from the neighbouring owner has made an attempt to interfere with the petitioner's peaceful possession and



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enjoyment of the subject land, the petitioner filed a suit in O.S.No.96 of

2018 on the file of District Munsif cum Judicial Magistrate Court, Vanur.

An ex parte decree was obtained on 19.07.2021. It is the further case of the petitioner that taking advantage of the petitioner's absence, the respondent, who suffered an ex parte decree, put up a compound wall in the petitioner's land in respect of which, the petitioner had the ex parte decree. After preferring a police complaint, the petitioner has approached this Court.

4. It is now admitted before this Court that the ex parte decree was later set aside and the suit is still pending on the file of District Munsif cum Judicial Magistrate Court, Vanur. In view of the fact that the decree obtained by the petitioner is ex parte, this Court is unable to find any willful disobedience. The person against whom the ex parte decree was obtained, had filed a petition under Order IX, Rule 13 of the Code of Civil Procedure and got the ex parte decree set aside.

5. Further, in the counter affidavit filed by the respondent, it is stated that the construction of compound wall was much prior to filing of the suit



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itself. Therefore, the contempt petition is filed with an ill-motive and to get something, which the petitioner cannot obtain before the civil Court on merits. No other verifiable material is produced before us to support the factual stand taken by petitioner.

6. This Court, without going into these factual controversy, finds that the petitioner can approach the civil Court for mandatory injunction or for demolition of the construction which is put up during the pendency of suit. Since the ex parte decree had now been set aside, this Court finds no cause for the petitioner to prosecute this contempt petition. The question of willful disobedience cannot be on the basis of mere statement on affidavit. In this case, there is nothing to indicate that there was construction when the ex parte decree was in operation. Leaving it open to the petitioner to seek appropriate relief in the pending suit, this contempt petition is dismissed. Consequently, Sub Application No.116 of 2023 is also dismissed.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

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SUNDER MOHAN,J.

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