



C.R.P.No.1583 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1583 of 2013

K.Ekambaram

...Petitioner

Vs.

G.Gandhimathi

...Respondent

Prayer: Petition filed under Article **227** of the Constitution of India as against the Fair and Decretal Order dated 28.02.2013 made in E.A.No.853 of 2013 in E.P.No.4411 of 2011 in O.S.No.1208 of 1996 on the file of IX Assistant City City Court, Chennai.

For Petitioner : Mr.G.Thangavel

For Respondent : Mrs.R.K.Sekina Reshma

ORDER

The Judgment debtor in O.S.No.1208 of 1996 is the Civil Revision Petitioner. This case has a chequered history.



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2. For the sake of convenience, the parties will be referred to as decree holder and judgment debtor.

3. E.A.No.853 of 2011 is an application filed by the judgment debtor to remove the lock unlawfully put up on 18.02.2013 in the residential property instead of 100 sq. ft of cattle shed kept vacant separately, by violating the specific directions of the Executing Court, in Execution Petition in E.P.No.4411 of 2011.

4. One K. Ekambaram, the judgment debtor filed O.S.No.4449 of 1995. His specific case is that he has been residing in the suit schedule mentioned property as a tenant. He claimed that the respondent Gandhimathi and the second defendant, Gnanaprakasam were attempting to forcibly dispossess Ekambaram from the suit schedule property. The suit schedule property is the house property in Door No.16, Dharma Raja Koil Street, Chintadripet, Madras – 2. The boundaries of the property are on the east by No.17, Dharma Raja Koil Street, South by Dharmaraja Koil Street, west by No.15, Dharmaraja Koil Street and north by Samy Naicken Street.



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5. The said suit having been filed in the year 1995 and since the plaintiff was in the possession of the property on the relevant date, the decree for injunction was granted on 21.09.2004. As per the decree, Gandhimathi and Gnanaprakasam were restrained by an order of permanent injunction not to interfere with the possession of Ekambaram, unless through due process of law. The decree in O.S.No.4449 of 1995 was appealed by Gandhimathi and Gnanaprakasam before the Principal Judge, City Civil Court, Madras. This appeal suit in A.S.No.457 of 2004 was dismissed on 04.02.2005. In other words, the possession of Ekambaram was protected till he is dispossessed in accordance with law.

6. Facing the plaint in O.S.No.4449 of 1995, Gandhimathi decided to file a suit in O.S.No.1208 of 1996. In this suit, the schedule of property is a portion of the property bearing Door No.16, Dharmaraja Koil Street, Chintadripet, Chenani – 2, being dilapidated cattle shed with tin sheet roof measuring 100 sq. ft, bounded on the south by Dharmaraja Koil Street and east, west and north by the other properties of the plaintiff. The suit ended in an exparte decree on 03.09.1997. To set aside the exparte decree, an



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application was filed which was dismissed. Challenging the same, an appeal was preferred in CMA.No.90 of 2003 which was also dismissed on 30.09.2003. Challenging the dismissal of the application under order 9 Rule 13 as confirmed by the Appellate Court, a Civil Revision Petition was preferred before this Court in C.R.P.No.3099 of 2000. That revision also ended in dismissal on 08.09.2004. In other words, the efforts of Ekambaram to set aside the exparte decree dated 03.09.1997 ended in futility.

7. In order to take possession of the property that had been decreed, an Execution Petition was filed in E.P.No.4411 of 2011. In the said Execution Petition, the learned Executing Judge passed an order directing the court bailiff to deliver vacant possession of the suit property which is a tin sheet roofed cattle shed in dilapidated condition being portion of the premises bearing Door No.16, Dharma Raja Koil Street, Chinthadripet, Chenani – 2 measuring about 100 sq. ft. The Executing Court was careful to direct the possession to be taken after taking the help of the Government surveyor and after measuring and locating the property. This order is on challenge before me.

8. Learned counsel for the petitioner disputed the identity and stated



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that he has the benefit of the decree in O.S.No.4449 of 1995 and A.S.No.457 of 2004 and also that, he has been in possession and enjoyment of the property. Apart from that, he would state that the decree is only for 100 sq. ft., and therefore, the Executing Court cannot exceed the same.

9. Mrs. Sekina Reshma, learned counsel appearing for the decree holder would submit that there is no mistake committed by the Executing Court. She would submit that the Executing Court cannot go behind the decree and as per the orders of the Court, delivery was taken in E.P.No.4411 of 2011.

10. I have carefully considered the arguments on either side and perused the records.

11. The schedule of the property in O.S.No.1208 of 1996 would show that the plaintiff had specifically given the boundaries of the property that had been in occupation of Ekambaram, the judgment debtor. It is not as if the entire extent was mentioned as 100 sq. ft., but a reading of the schedule shows that the dilapidated cattle shed was to an extent of 100 sq. ft. Apart from this extent, the plaintiff has given specifically the boundaries to the property.



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12. It is a settled position of law where there is a dispute with respect to the extent and the boundaries, the boundaries of the property will prevail over the extent. Apart from that, the learned Executing Judge has appointed a surveyor for the purpose of identifying the property before handing over of possession to the decree holder.

13. I also recollect the principle that an Executing Court cannot go behind the decree and it is bound to execute the decree as it stands. In the present case, the Executing Court has also not only been cautious, but has been abundantly cautious, in order to ensure that the decree is executed as it stands.

14. I do not find any error or irregularity, since what has been handed over to the decree holder is only as per the decree. If there is a dispute between the boundary and the extent, the boundaries will always prevail. In the light of the above, I do not find any merit in CRP.No.1583 of 2013 and the same is dismissed. No costs.

21.09.2023

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Index : Yes/No



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Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

The IX Assistant City City Court, Chennai.



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V. LAKSHMINARAYANAN, J.

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