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CRP(NPD)No.181



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)No.1810 of 2016
and C.M.P.No.9467 of 2016**

G.Ramu

.. Petitioner

Vs.

Jawadu Hill Teak & Agri Horticultural
Farms Private Limited
Represented by its Director M.Shanmugam
Nos.10 & 11, Radha Krishna Nagar
Arumbakkam, Chennai 600 106.

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 18.03.2016 made in E.P.No.9 of 2015 in O.S.No.2876 of 2005 on the file of the Additional District Munsif Court at Vaniyambadi.

For Petitioner : Mr.S.Arivazhagan

For Respondent : Mr.K.Rajasekaran

ORDER



Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2.The revision arises against an order passed under Order XXI Rule 32 of the Code of Civil Procedure. Under the said provision, there must be a specific finding that despite an opportunity given to the judgment debtor to obey the decree, he had wilfully disobeyed the same.

3. The civil revision petitioner is the judgment debtor and the respondent is the decree holder. Here is the case, where the property is situated in Jawadu Hills in the Vellore District. The decree holder obtained a decree against the civil revision petitioner for bare injunction. The said suit O.S.No.2876 of 2005 was filed before the XI Assistant City Civil Court, Chennai. It ended in an exparte decree on 22.11.2006. In order to enforce the said decree, R.E.P.No.9 of 2015 was filed by the decree holder before the District Munsif Court at Vaniyambadi.

4. It is the case of the judgment debtor/civil revision petitioner that he has not taken possession of the property after the decree had been passed, but has been in possession and enjoyment of the property from the beginning. The learned trial Judge allowed the execution petition, against which the present revision has been presented



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by the judgment debtor.

5. As premised above, it is the duty of the Court while disposing of an application under Order XXI Rule 32 of C.P.C., to give a specific finding that the judgment debtor had an opportunity to comply with the decree and despite such opportunity, he wilfully disobeyed the same. This is the condition precedent for invoking Order XXI Rule 32(1) of C.P.C. The learned Judge has allowed the execution petition without giving such a finding. Therefore, I am inclined to set aside the order passed in R.E.P.No.9 of 2015 in O.S.No.2876 of 2005 and remit the matter to the Additional District Munsif Court, Vaniyambadi. The decree being of the year 2005, the learned Additional District Munsif, Vaniyambadi, is requested to give priority to the execution petition. The learned Judge need not record fresh evidence or receive fresh documents from the parties. Evidence already recorded may be perused and appropriate orders be passed. The matter is sent back to the Court below only for the purpose of giving a finding as to whether the decree holder has shown that the judgment debtor has violated the decree.

6. Learned counsel appearing for the judgment debtor/civil revision petitioner would argue that the decree being exparte decree enforceability is an issue. Even an exparte decree is enforceable and the same is akin to a contested decree. Therefore, the only purpose of remand is to find out whether there is any wilful disobedience or



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7. In fine,

(i) With the above observation, the Civil Revision Petition stands allowed.

(ii) E.P.No.9 of 2015 is restored to the file of the learned District Munsif at Vaniyambadi.

(ii) The learned Additional District Munsif, Vaniyambadi, is requested to dispose of the execution petition on or before 31.10.2023.

(iii) Both the parties shall co-operate with the Executing Court for the purpose of deciding the issue. In case, the Executing Court feels that either party is not co-operating for the purpose of arguments, it shall proceed further and pass orders. No costs. Consequently, connected Miscellaneous Petition is closed.

14.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note:Issue order copy on 18.07.2023

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V.LAKSHMINARAYANAN,J.

Kj

To

The Additional District Munsif,
Vaniyambadi.

C.R.P.(NPD)No.1810 of 2016
and C.M.P.No.9467 of 2016

14.07.2023