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CRP No.1381 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMI NARAYANAN

CRP No.1381 of 2019

J.Ganessin

...Petitioner

Vs

1.Latha @ Stella

2.Pasteur Alisa

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code 1908 to set aside the fair and decretal order by I Additional District Munsif at puducherry in E.P.No.83 of 2012 in O.S.No.1295 of 2010 dated 24.07.2018.

For Petitioner : Mr.J.Ganessin
Party-in-Person

For Respondents : Mr.A.Arasu Sanga Tamil
for M/s K.S.Karthik Raja

ORDER

The party-in-person was heard and so was Mr.A.Arasu Sanga Tamil learned counsel for the respondents.



CRP No.1381 of 2019

WEB COPY

2. Mr.J.Ganessin is the decree holder in O.S.No.1295 of 2010. He filed an application in E.P.No.83 of 2012 under Order 21 Rule 32(5) of Civil Procedure Code to punish the respondents herein for violating the decree. The violation that Mr.J.Ganessin alleges is that the respondents 1 and 2, who are the judgment debtors, had put up construction over the property after he had obtained the decree for permanent injunction.

3. Prior to this revision petition, Mr.J.Ganessin had filed an application in E.A.No.39 of 2015 for demolishing the superstructure put up by the respondents 1 and 2. In E.A.No.39 of 2015, an Advocate Commissioner was appointed. The Advocate Commissioner submitted a report that the building is not a new one, but, an old one. Challenging the same, Mr.J.Ganessin has filed C.R.P.No.1333 of 2019. When that matter was taken up for hearing, this Court has passed the following order:-

“ 7. It is seen from the records that the “B” Schedule property itself was identified by the revision petitioner to the Advocate Commissioner. The Advocate Commissioner has noted down the door number which is fixed in



CRP No.1381 of 2019

the house as 22 and therefore, it is crystal clear that even when the suit was filed the defendants are residing in the said property which is in the “B” schedule property. The Advocate Commissioner's report does not show any kind of new construction that has been put up in the “B” schedule of property and apart from that there is no other evidence let in by the revision petitioner to show the construction. Therefore, I do not find any infirmity in the order passed by the Court below.”

4. The finding that the building is an old one and no new construction had been made has become final. J.Ganessin would submit that he filed Civil Miscellaneous Appeal as against the order passed in E.A.No.39 of 2015. I am not going into the merits as to whether a CMA is maintainable or whether CMA could have been filed after the order that has been passed in CRP No.1333 of 2019. Suffice it for this case that as extracted above, this Court has come to the conclusion that the constructions were existing on the date on which decree had been



WEB COPY



CRP No.1381 of 2019

V.LAKSHMINARAYANAN,J.,

SR

passed and are not new constructions. No further order could have been passed in E.P.No.83 of 2012.

Consequently, CRP No.1381 of 2019 is dismissed. No costs.

04.07.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

The Additional District Munsif at Puducherry.

CRP No.1381 of 2019