



CRP No.365 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.365 of 2024 and
CMP No.1707 of 2024

D.Murugadoss

... Petitioner

Vs.

M.Gondhasamy (died)

1. Dhanalakshmi
2. Sujithran
3. Dhatchaniya
4. Srivaran
5. The Commissioner,
Nagapattinam Municipality,
Nagapattinam

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.12.2023 made in E.P.No.4/2012 in O.S.No.310/2005 by the District Munsif, Nagapattinam.

For Petitioner

: Mr.M.S.Palaniswamy



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 22.12.2023 made in E.P.No.4/2012 in O.S.No.310/2005 by the learned District Munsif, Nagapattinam.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the defendant and the respondents herein are the plaintiffs in O.S.No.310/2005. The respondents had filed the above said suit before the District Munsif, Nagapattinam seeking

i) permanent injunction, restraining the first defendant from continuing the construction of 3 pillars at 136 feet length, leaving 1 1/2 feet gap to each pillars, joining the mother wall of the plaintiffs and also other constructions.

ii) Mandatory injunction, directing the first defendant to remove the 3 pillars, which is constructed joining the north side wall of the plaintiff.

iii) Mandatory injunction, directing the second defendant to cancel the



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planning permission granted to the first defendant, since he is making construction, violating the planning permission.

iv) and for costs.

After contest, the suit was decreed on 31.07.2009, as prayed for by the respondents/ plaintiffs, by granting two months time to remove the said pillars and the unauthorised constructions. Subsequently, the respondents/ plaintiffs have filed E.P.No.4/2012 to execute the above said decree and the same was also allowed on 22.12.2023. Challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. The petitioner herein is the defendant and the respondents herein are the plaintiffs in O.S.No.310/2005, and the above said suit was decreed in favour of the plaintiffs, as stated supra. To to execute the decree, the respondents/ plaintiffs have also filed E.P.No.4/2023, which was also



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allowed 22.12.2023. Further, it is to be noted that in the order passed in E.P.No.4/2012 in O.S.No.310/2005, the learned District Munsif, Nagapattinam has observed as follows.

3. As the decree obtained by the petitioners was unable to be executed on the previous two occasions, this court is inclined to order that the execution as per the decree, should be made in the presence of the VAO, Government Surveyor and Police Personnel for effective execution of the decree in the interest of justice.

5. In such circumstances, it is the contention of the petitioner/defendant that, he is the owner of plot in Survey No.2842 and he constructed the building in S.No.2842, after getting approval from the municipal authorities. It is further contended by the petitioner/defendant that, he had not made any encroachment in the suit property in survey No.2841. However, the respondents/plaintiffs had obtained decree in respect of survey No.2841, only in order to make an attempt to trespass into the survey No.2842. Therefore, the order passed by the executing court is liable to be set aside.



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6. On perusal of the execution petition, it reveals that the respondents/ plaintiffs/decree holder have clearly mentioned the details of the schedule of property , situated in survey No.2841. Further, it is to be noted that the decree holderd are entitled to execute the decree. The executing court, in its order, has ordered to execute the decree, only in the presence of V.A.O, Government Surveyor and Police Personnel for effective execution of the decree, since on the previous two occasions, the decree was unable to be executed. Therefore, there may not be a possibility to trespass into the petitioner's survey No.2842 by the respondents/plaintiffs/decree holders. The petitioner may take care at the time of execution, preventing any trespass by the decree holders. When the Executing Court has clearly ordered to execute the decree in the presence of VAO, Government Surveyor and Police Personnel, the fear expressed by the petitioner is an imaginary one. Therefore, and I find no reason to interfere with the impugned order passed by the Executing Court and hence, the civil revision petition is liable to be dismissed as it has no merits.



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7. In fine, the civil revision petition is dismissed and the impugned order passed by the Executing Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
mst

To

The District Munsif, Nagapattinam.



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V.SIVAGNANAM, J.,

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