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CRP.Nos.1453 & 1455 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.Nos.1453 & 1455 of 2024
and CMP.Nos.7803 & 7809 of 2024

L.Kaalidhoss

... Petitioner in both CRPs

Vs

L.Muniyandi

... Respondent in both CRPs

Prayer in CRP.No.1453 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order made in unnumbered Review Petition in SR.No.83417 of 2023 against the unnumbered I.A.SR.No.48748 of 2023 in A.S.No.117 of 2015 dated 24.01.2023 on the file of the V Additional Judge, City Civil Court, Chennai, in rejecting the petition and allow the civil revision petition.

Prayer in CRP.No.1455 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order made in unnumbered I.A.SR.No.48748 of 2023 in A.S.No.117 of 2015 dated 24.01.2023 on the file of the V Additional Judge, City Civil Court, Chennai,



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in rejecting the application as not maintainable and allow the civil revision petition.

For Petitioner : Mr.A.C.Kumaragurubaran

COMMON ORDER

These two revision petitions arise against the orders of the learned V Additional Judge, City Civil Court, Chennai, dated 24.01.2023 and 29.08.2023 respectively, rejecting the petitions filed in Review Petition SR.No.83417 of 2023 in I.A.SR.No.48748 of 2023 in A.S.No.117 of 2015 and I.A.SR.No. 48748 of 2023 in A.S.No.117 of 2015.

2. The necessary facts of the case are as follows :

- a) The plaintiff in O.S.No.6039/2013 on the file of City Civil Court, Chennai, is the appellant in A.S.No.117 of 2015, and the respondent in the present revision petition. He presented the suit for permanent injunction and for consequential reliefs against the defendant, who is his sibling.
- b) The plaintiff claims that there is a common passage, which both



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the plaintiff and defendant are entitled to enjoy without interference of each other. The suit came to be dismissed.

- c) Aggrieved by the same, an appeal was preferred in A.S.No.117 of 2015 before the V Additional City Civil Court at Chennai.
- d) Pending appeal, an application was filed by the plaintiff in CMP.No.853 of 2018 in AS.No.117 of 2015 for appointment of Advocate Commissioner to visit the suit property and to submit a report. That application came to be dismissed. Against the order of dismissal, both the plaintiff and defendant preferred two separate revision petitions viz., CRP.(NPD) No.3562 of 2019 (by plaintiff) and CRP.(PD) No.4126 of 2019 (by defendant). These two revisions came to be dismissed by a common order of this Court dated 14.09.2022.
- e) Be that as it may, pending the appeal, the defendant had filed a petition before the learned Appellate Judge in I.A.No.1 of 2019 in A.S.No.117 of 2015, alleging that the plaintiff had put up a wall in the suit property affecting the rights of both parties, and the same may be removed by a direction of the Court. That petition came to be dismissed on 03.09.2019.



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- f) Thereafter, on 23.06.2023, the defendant again moved the City Civil Court with another application in IA.SR.No.48748 of 2023 under Section 144 r/w. Section 151 of CPC in the pending appeal namely A.S.No.117 of 2015, to pass an order directing the removal of the wall which had been put up by the plaintiff pending the litigation. This application came to be dismissed on 29.08.2023 as the same is not maintainable and is also barred by the principle of *res judicata*.
- g) Yet again, the defendant had approached the Appellate Court on 03.10.2023 with a review application in SR.No.83427 of 2023 to review the order passed by the learned Judge in IA.SR.No.48748 dated 29.08.2023. This application also met with the same fate and was dismissed on 24.01.2024.

3. Challenging the order dated 29.08.2023 passed in IA.SR.No.48748 of 2023 and the order dated 24.01.2024 passed in Rev.Apl.SR.No.83427 of 2023, the present two revisions have been presented.



4. Heard Mr.A.C.Kumaragurubaran, learned counsel for the petitioner in both the revisions.

5. Mr.A.C.Kumaragurubaran, learned counsel would contend that the Court under Section 144 r/w.151 of CPC, has the power to direct the removal of the wall put up by the plaintiff pending the proceedings as the same falls within its power of restitution. In support of his contention, he relied on the ratio in ***Kannappa Mudaliar (Died) and 2 others Vs Ayyaswami Gounder (died) and 7 others, 1998 (I) CTC 33.***

6. The power of the Court to grant restitution is inherent and it is available with the Court even without statutory provisions. The power of Court to order restitution is merely recognised under Section 144 of CPC. For the purpose of ordering restitution, there should be an original order of the Court which should have been either set aside, modified or reversed by the appropriate Court. In the absence of an original order being passed and that being subsequently modified, the question of restitution will not arise at all. The basis on which this doctrine has been developed is by the famous legal maxim '*Actus Curiae Neminem Gravabit*' which means the act of the Court



should not affect any party. This maxim implies that there should be an act/omission pursuant to an order of the Court. If the offending wall had been put up, pursuant to the order of the Court and that order has been set aside, certainly the Court has the power to direct its removal. But that is not the situation here. The plaintiff is alleged to have put up a wall pending the litigation. Therefore, if the defendant is aggrieved that his rights are affected, his remedy is only to file a suit for mandatory injunction, praying for removal of the wall.

7. Mr.A.C.Kumaragurubaran would argue that if a suit for mandatory injunction is being filed, it would prolong the pending proceedings and his client would suffer due to the pendency of proceedings.

8. The fact that fresh proceedings would take time and would cause inconvenience to the parties cannot be a mere ground for the Court to grant an injunction at the instance of one party. I do not find any error in the orders of the Court below, which are now under challenge in these revisions. Hence, both the revision petitions stand dismissed. The learned Appellate Judge is directed to dispose of the appeal in A.S.No.117 of 2015 within a period of



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three months from the date of receipt of a copy of this order, excluding the month May 2024. No costs. Consequently, connected miscellaneous petitions are closed.

10.04.2024

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking orders

To:

- 1.The V Additional Judge
City Civil Court, Chennai,
- 2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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