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C.R.P.[NPD].No.2950 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.2950 of 2024 & CMP.No.15777 of 2024

1. Palani
2. Munusamy

. . . Petitioners

Versus

Boopal

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order of arrest in R.E.P.No.1 of 2023 in O.S.No.84 of 2006 dated 26.02.2024 passed by the learned District Munsif, Dharmapuri and allow this Civil Revision Petition.

For petitioners : Mr.R.Thanigaiarasu

Respondent : Mr.N.Desinghu

ORDER



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Challenge has been made to the Order passed by the Execution Court ordering detention of the revision petitioner in civil prison for three days for violating the decree and judgment passed in O.S.No.84 of 2006.

2. The brief background of the case is as follows :

The suit in O.S.No.84 of 2006 has been filed for declaration and permanent injunction in respect of the land in survey No.149 of Nathahalli Village. The total area in the survey number is 4.91 acre. However, the suit has been filed for 1 acre with specific boundaries, viz., the land of Muthu on the South, North by the land of Senthamarai, the lands of Ariya and Poovi on the East and Athagapadi village on West. The said suit has been decreed and the same has reached finality. After 8 years, an execution petition has been filed as if the revision petitioners have violated the injunction Order and interfered with the possession of the respondent. The trial Court merely on the basis of the CSR given in this regard has come to the conclusion that the revision petitioners have tried to encroach upon 70 cents of the land belonging



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to the respondent.

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3. The learned counsel appearing for the revision petitioner submitted that as far as 1 acre is concerned, in respect of which declaration and injunction has been granted with specific boundaries, the petitioners have not interfered at any point of time. Whereas, the respondent taking advantage of the injunction granted in the suit for one acre, is trying to encroach upon the remaining property in the same survey number. Therefore, he has just created one CSR receipt after 8 years of the decree and judgment and based on which, the trial Court has passed the detention Order.

4. Whereas, the learned counsel appearing for the respondent contended that as the revision petitioners tried to interfere with the possession of the property, such an Order came to be passed. Hence, opposed the revision petition.

5. Heard both sides and perused entire materials available on record.



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6. The suit in O.S.No.84 of 2006 has been decreed only in respect of 1 acre with specific boundaries. It is the specific case of the revision petitioners that they have not interfered with the possession of the respondent at any point of time and since there is larger extent in the same survey number, the respondent/deGREE holder is trying to convert the property as a lay out of one acre and trying to encroach upon other properties taking advantage of the decree and judgment passed in O.S.No.84 of 2006. When the very issue is with regard to the entire property has not been established, whether the respondent is actually in possession of 1 acre or whether the revision petitioners had encroached the property of the respondent, mere CSR is not sufficient and there must be deliberate attempt and violation of the injunction passed in the suit. Since, the survey number contains larger area, the contention of the learned counsel appearing for the revision petitioners cannot be brushed aside. In such view of the matter, the trial Court ought to have appointed an advocate commissioner in this regard to find out whether there is any actual encroachment or there is an attempt by the judgment debtors to encroach upon the property of the respondent. Merely on the basis of the submissions of the respondent alone, detention cannot be ordered. It is the



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specific case of the revision petitioners that they will not interfere with the possession of the respondent in 1 acre, in respect of which decree has already been granted, their stand again recorded before this Court. If there is any violation, the respondent can very well file a fresh Execution Petition.

7. With the above observations, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

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