



C.R.P.No.3556 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.No.3556 of 2022
and
C.M.P.No. 18933 of 2022

1. Palanisamy
2. Arumugam
3. Sagadevan

...Petitioners

Vs

Duraisamy

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order and decree dated 20.07.2022 in R.E.P.No. 79 of 2020 in O.S.No. 477 of 1999 on the file of the III Additional District Munsif Court, Salem.

For Petitioners : Mr.R.Rajarajan

For Respondent : No appearance



C.R.P.No.3556 of 2022

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ORDER

This Civil Revision Petition has been preferred as against the order passed in R.E.P.No.79 of 2020 in O.S.No. 477 of 1999 on the file of III Additional District Munsif Court, Salem dated 20.07.2022, wherein this petitioners have filed the petition under Order 21 Rule 32 of Civil Procedure Code to detain the respondent in civil prison for disobeying the order of permanent injunction. The said petition was dismissed, against which the present revision petition is filed.

2. The petitioners are the decree holders and respondent is the judgment debtor. The petitioners have already obtained a decree in O.S.No. 477 of 1999 on the file of III Additional District Court, Salem. As per the decree, the petitioners are declared as owner of the suit schedule properties and the respondent was restrained from interfering with the plaintiffs peaceful possession and enjoyment of the suit property. According to the petitioners after passing a decree dated 19.12.2019 when the petitioners tried to put compound wall on their property on 18.06.2020, the respondent attempted to stop the said construction work with the help of rowdy elements. The



C.R.P.No.3556 of 2022

respondent also failed to cut trees which were fell on the house of the petitioners. Therefore, the petitioners complained before the concerned police official and they advised to approach the Civil Court. Therefore, the petitioners have filed the petition for disobeying the permanent injunction granted by this Court.

3. Before the Trial Court, the respondent did not appear and he was set exparte and on the side of the petitioners, P.W.1 and P.W.2 were examined and marked Ex.P1. The Trial Court after considering the evidence adduced on petitioner's side, dismissed the petition by holding that there is no evidence to prove the disobedience of the decree by the respondent and dismissed the petition.

4. The learned counsel appearing for the petitioners would contend that the petitioners are the decree holders and they got decree for declaration and permanent injunction as against the respondent herein through decree dated 19.12.2019 and the respondent also aware of the decree passed against him. While being so, the petitioners attempted to put up construction in their



C.R.P.No.3556 of 2022

property on 18.06.2020, the respondent stopped the construction with Rowdy elements. Therefore after knowing the decree for permanent injunction from interfering with the plaintiffs peaceful possession and enjoyment of the property, the respondent disturbed the possession of the petitioners. Therefore, he has to be punished by putting him into Civil Prison. To that effect, he filed petition before the Execution Court and also examined P.W.1 and P.W.2 and also marked Ex.P1. But the Executing Court without considering the evidence adduced by the petitioners, dismissed the petition.

5. No representation for the respondent, despite service of notice to him, he did not appeared and name of the respondent also printed in the cause list. Therefore, this Court heard the petitioner side and passed the orders on merits with available records.

6. The petitioners have filed a petition before the Trial Court to punish the respondent for disobeying the order of the Court passed in O.S.No. 477 of 1999. Before the Trial Court, two witnesses were examined as P.W.1 and P.W.2 and Ex.P1 was marked. As per the evidence of P.W.1 and P.W.2, the



C.R.P.No.3556 of 2022

respondent disobeyed the order of the Court. The Trial Court in the order after referring the judgement of *Arjuna Gounder vs. Govindaraju Reddiar* reported in **1990 (2) LW 98** dismissed the petition by holding that though the respondent was set ex-parte, it does not relieve the petitioners on their duty to establish their case with sufficient evidence. Evidence available before the Court are not sufficient to grant the relief under Order 21 Rule 32.

7. This Court also carefully perused the entire records and the evidence adduced by the petitioner's side.

8. Though the petitioners have stated that the respondent has stopped the construction of compound wall and the respondent was set ex-parte, the evidence of petitioners side are not sufficient to prove that the respondent had wantonly disobeyed the order of this Court. There is no evidence that where the construction was put up and how the respondent interfered with the petitioners peaceful possession and enjoyment of the suit property. It is the duty of the petitioner to establish with sufficient evidence that the respondent wantonly disobeyed the order of this Court. There is no evidence to prove



C.R.P.No.3556 of 2022

that the petitioners attempted to construct the wall in the suit property and the respondent obstructed the petitioners from constructing the compound wall. Therefore, the order passed by the Trial Court is well reasoned order and it does not warrants any interference. In view of the above said discussions, this Court is of the opinion that this Civil Revision Petition has no merits and it is deserves to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. Consequently connected Civil Miscellaneous petition is closed. No costs.

01.08.2024

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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

To
The III Additional District Munsif Court,
Salem.



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C.R.P.No.3556 of 2022

P.DHANABAL,J

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C.R.P.No.3556 of 2022

01.08.2024