



C.R.P.(MD).No.668 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.668 of 2021

1.J.Hemanth,
2.J.Jaswanth,
3.C.Jeyapaul.

... Petitioners

VS

K.Ganeshkumar

... Respondent

PRAYER: Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 19.02.2021 made in C.M.A.NO.2 of 2020 on the file of the Sub Court, Periyakulam confirming the fair and decreetal order passed in I.A.No.113 of 2017 dated 30.08.2018 in O.S.No.88 of 2014 on the file of the District Munsif, Periyakulam.

For Petitioners : Mr.A.K.Manickam

For Respondent : No appearance



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ORDER

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This Revision Petition has been filed to call for the records and set aside the fair and executable order dated 19.02.2021 made in C.M.A.NO.2 of 2020 on the file of the Sub Court, Periyakulam confirming the fair and decreetal order passed in I.A.No.113 of 2017 dated 30.08.2018 in O.S.No.88 of 2014 on the file of the District Munsif, Periyakulam.

2. The revision petitioners are the defendants in the suit. The plaintiff is arrayed as respondent. Though notice was issued and his name was printed in the cause list, there is no appearance in person or through pleader.

3. Mr.A.K.Manickam, the learned counsel for the revision petitioners, who were arrayed as defendants, submits that a suit was filed in O.S.No.88 of 2014 on the file of the District Munsif Court, Periyakulam, wherein the plaintiff has filed an injunction application in I.A.No.268 of 2014 in which the injunction was granted for restraining the defendant/revision petitioner not to put up further buildings.



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4. The respondent/plaintiff has filed I.A.No.113 of 2017 contending that the revision petitioner/defendant had disobeyed the order, wherein the property worth about Rs.1,00,000/- was attached. The revision petitioner/defendant had referred to the Advocate Commissioner's report and found place at page 50 of the typed set of papers filed along with the petition. The finding of the Advocate Commissioner categorically says that when he was visiting the premises, no further construction was happening.

5. At that point of time, the Court has specifically questioned the Advocate Commissioner with regard to the photos shown by the Advocate Commissioner as to whether there was no construction activities. On the question posed by the Court, the Advocate Commissioner had replied that whatever found in the building was reflected in the report as well as the photos and there was no violation in pursuant to the order of injunction. When there was no violation as per the report of the Advocate Commissioner and in a specific reply to the question posed by the Court, it is clear that the petitioner has not violated the injunction order granted in I.A.No.268 of 2014.

6. The revision petitioner/defendant contended that the revision



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petitioner challenging I.A.No.113 of 2017, wherein an attachment was ordered by the Trial Court, filed C.M.A.No.2 of 2020 on the file of the Sub Court, Periyakulam. The Appellate Court, without examining or ascertaining the contention raised by the revision petitioner, had reproduced the order passed by the Trial Court in I.A.No.113 of 2017. Aggrieved by the same, the present revision petition.

7. The learned counsel for the revision petitioner/defendant contends that when there was no further construction put up by the revision petitioner/defendant, it was reflected in the Advocate Commissioner's report and it was further clarified by the Court by posing a specific question to the Advocate Commissioner by getting reply from the Advocate Commissioner, it was clear that the defendant/revision petitioner had not violated the order of injunction passed by the Trial Court. The Appellate Court had not gone into the contention raised by the revision petitioner and simply concluded the order passed by the Trial Court in I.A.No.113 of 2017.

8. Though notice was served on the respondent/plaintiff, after receipt of the summons, there is no appearance either in person or through pleader.



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However, when there is a categorical finding, based on the Advocate Commissioner's report that the revision petitioner/defendant has not disobeyed injunction order granted in I.A.No.268 of 2014 dated 09.06.2015, it is absolutely without any material.

9. In view of the same, the orders passed in C.M.A.No.2 of 2020 on the file of the Sub Court, Periyakulam and in I.A.No.113 of 2017 dated 30.08.2018 in O.S.No.88 of 2014 on the file of the District Munsif, Periyakulam is set aside.

10. As the suit is of the year 2014, the Trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order.

11. This Civil Revision Petition is allowed with above direction. No costs.

12.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

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WEB COPY To

- 1.The Sub Judge, Periyakulam.
- 2.The District Munsif, Periyakulam.



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N.SENTHILKUMAR,J.

apd

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