

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present: **N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Monday the 17th day of March 2025

EA.No.5/2024

in

E.P.No. 10/2022

in

O.S.No.324/2017

P.Eswaran

... Petitioner/Decree Holder

/ Vs /

1. L.Subramaniam (Died)

2. Rasu @ S.Paramasivam

...Respondents/Judgment Debtors

This Petition is coming on 18.12.2024 this day for final hearing before me in the presence of Mr.K.Shanmuganathan, Advocate for the Petitioner/D.H and of Mr.K.Karthikaivelan, Advocate for the Respondent/JD and on hearing submissions and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed under section 151 of CPC to direct the Sub – Inspector of Police, Sultanpet, Coimbatore to assist the court amin to arrest the 2nd respondent/ judgment debtor to execute the warrant.

1. The brief averments of the affidavit filed by the petitioner as follows:-

1.1. The E.P.No.10/2022 filed for the arrest of the 2nd respondent/ judgment debtor. Hence, the petitioner/ Decree holder have come forward with this application seeking to direct the Sub – Inspector of Police, Sultanpet, Coimbatore to assist the

Court amin to arrest the 2nd respondent/ judgment debtor to execute the warrant. Hence, the petition.

2. The brief averments of the counter filed by the Respondent as follows:-

2.1. The petition is false, frivolous, vexatious and not maintainable both in law and on the facts of the case. The suit originally filed by the plaintiff/ petitioner for the relief of permanent injunction not for mandatory injunction. In the suit the plaintiff no were asked for mandatory injunction on alleged encroachment. Hence, the relief prayed in the execution petition itself abuse process of law.

2.2. When the execution petition itself not maintainable. Then now the petitioner has file petition for break open lock for removal of encroachment is also not maintainable. The execution petition itself not maintainable in the law and then subsequent petition filed by petitioner to permit the court Amin to arrest to execute the warrant is maintainable in the law.

2.3. The 2nd respondent is aged 50 years old and suffering with severe illness and having no sufficient income to maintain the family. The property is the only shelter for the respondent. If the petitioner succeeds in his illegal claims the respondent will be put into much loss and hardships. The petition is devoid of merits and liable to be dismissed in limini.

3. Point for Consideration:-

Whether the petition filed under section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard learned counsel for both side. On perusal of records, the EP is filed on 21.04.2022 on the basis of decree passed in OS.No.324/2017 dated 26.10.2017. Originally the main suit is for permanent injunction and the court granted the relief of permanent injunction by restraining the defendant from interfering the plaintiff's peaceful enjoyment of the 'A' schedule property by passing through the 'B' schedule

passage. The EP is filed by the petitioner by stating that, the defendant has encroached the 'B' schedule pathway by way of constructing building and by way of planting saplings. Hence they seeking relief of removal of encroachment and arrest of Judgment Debtor for disobedience of permanent injunction decree. After notice the respondent/JD appeared in person before this court on 04.07.2022. After that, he engaged counsel on his own and filed his counter on 29.02.2022. After that, this case is posted for enquiry and the petitioner/decreed holder filed proof affidavit and examined himself as PW.1.

4.2. Further on repeated opportunity the respondent/JD has not appeared for cross examining the PW.1 and he was set exparte on 20.02.2023. Further the respondent/JD filed 1st petition under order 21 rule 105 of CPC to set aside the exparte order passed against him and the same in EA.No.1/2023 has been allowed on cost and the exparte order has been set aside, this case posted for cross examination of PW.1 on 25.07.2023. Further the respondent/JD has not present on subsequent hearings and on 21.08.2023 this 2nd respondent present and he has not choosen to cross examine on 21.08.2023 he set exparte for non appearance after passed over the matter at 3.00 p.m,. Further on enquiry this court passed order of arrest on of respondent/JD 30.08.2023. Further the respondent/JD arrested and produced before this court on 08.09.2023 and after receiving the Mutchalikka for regular appearance the Judgment Debtor released. Further on 22.09.2023, the respondent present before this court along with this 2nd application to set aside the exparte order passed against him on 21.08.2023.

4.3. On perusal of records the judgment debtor had appeared frequently and his presence has been noted by this court. This EP filed for disobedience of decree of permanent injunction, already sufficient opportunity given by this court to the Judgment Debtor for appearance and contest the case he failed to appear and contest the case hence, in order to execute the decree, this court finds the assistants of police

is necessary to arrest the Judgment Debtor and remove the encroachment in the 'B' schedule property.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 17th day of March 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
EA.No.5/2024 in
E.P.No.10/2022 in
O.S.No.324/2017
Dated : 17.03.2025
DMC, Sulur.