

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Friday, the 29th day of July, 2022

I.A.No. 5/2022
in
O.S. No. 29/2021

1. G. Kalidass Goundar
2. K. Ganesh

...Petitioners/Plaintiffs

-vs-

V. Mohan @ Rajendiran

...Respondent/ 1st Defendant

This petition coming up before me on 13.07.2022 for final hearing in the presence of, Thiruvalargal.B. Narayanan, B.Srikrishnan, J. Gopinath, R.Balaji, A.Kalimuthu and G.Ramachandiran, counsel for the Petitioners/ Plaintiffs and Thiru.N.Ganapathy counsel for Respondent/ 1st Defendant and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/ Plaintiffs under Order XXXIX Rule 2-A of the Civil Procedure Code, 1908 for attachment of the illegal construction in 'B' schedule property and 'C' schedule property with immediate effect and to detain the 1st Respondent in the civil prison for three months.

2.The averments stated in the petition in brief:

This court passed an order in I.A. 2/2021 and I.A.3/2021 to not to alienate the suit 'B' schedule property and suit 'C' schedule property and directed to stop further construction or any other activity in suit 'B' schedule property and suit 'C' schedule property. The Petitioners had complied with Order 39 Rule 3(a) of CPC and all the Respondents had received the notice and all documents. But the Respondent did not stop the construction even after receiving the order and other documents and had thus disobeyed the order of this court. The Petitioners had lodged a complaint on 10.04.2021 in Acharapakkam Police station and the Police officials had refused to receive the complaint. Hence the Petitioners had sent the complaint to various police authorities on 15.04.2021 and on 17.04.2021. But there is no action on the part of the Police. The Petitioner's aunt had approached the Respondent and had told him not to proceed with the construction as per the order of this court. But the Respondent had given a life threat to the Petitioner's aunt. The Respondent is a very influential person and has political support. In spite of the order of this court the Respondent had completed the construction and he is trying to alienate the property. Hence this petition.

3. The averments stated in the Counter filed by the Respondent/ 1st Defendant in brief:

The Respondent owns land in the old S.No.167 New S.No.261/17 to an

extent of Ac.0.06 cents and it was in possession and enjoyment of the Respondent's ancestors for more than 15 decades. The Respondent never encroached the property of the Petitioners and had never made any construction in the Petitioner's property. There is an old house in the Respondent's property and it was in a dilapidated condition and hence the Respondent demolished the construction and constructed the building only in his property before filing of this suit. The Petitioner had filed this petition without any measurements and therefore this petition is not maintainable. The Respondent never disobeyed the order of this court and he is trying to alienate the suit property. This petition is filed to drag on the proceedings. Hence this petition is liable to be dismissed.

4. The point for determination is whether this petition is to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides

6. Heard both sides and perused the records.

7. The Petitioners/Plaintiffs had filed this petition to punish the Respondent for disobeying the injunction order of this court. The Respondent had resisted the petition stating that, he had demolished old dilapidated house in his property and had reconstructed the same. The Petitioner had filed this petition on 07.02.2022. At the time of filing of the above suit on 26.03.2021, the Petitioner had filed the Photos of the building under construction and the injunction order was passed on 26.03.2021. Perusal of the Photos, Plaint document No.7, shows that walls of the building was already

erected, as on the date of the injunction order. As per records, the notice to the Respondent was served on the Respondent through Registered post with Acknowledgment on 21.05.2021. Therefore nearly 2 months were taken for service of the notice on the Respondent. The Petitioner had filed the photo along with this petition, wherein the above said building is in a completed stage. As per document No.7, at the time of filing of the suit, the walls of the building was almost completed and therefore this court is of the opinion that there is every possibilities to complete the construction of the building within 2 months, even before the notice was served on the Respondent.

8. The Hon'ble High court of Madras in the case of Ani Chennai Exports Pvt. Ltd. v. K.P. Rajendran had observed as follows;

"13. It is to be pointed out that the provisions of Order 39 Rule 2 A are penal in nature and that the disobedience must be proved like a charge in a Criminal Court. As a matter of fact, mere allegation of disobedience is not sufficient, in the considered opinion of this court. The standard of proof i.e, Required for violation of disregard of an injunction order is that of a criminal case, since the said act of a violator itself ends in his detention in civil imprisonment.

15. Also, this court aptly points out that the power of the Court under Order 39 Rule 2A of the Civil Procedure Code is punitive and akin to the power to punish for civil contempt in Contempt of Courts Act, 1971. Indeed, it should be exercised with great care and caution, as opined by this Court.

16. It is to be borne in mind that under Order 39 Rule 2 A of the Civil Procedure Code cannot be passed either on suspicion or as a matter of course. To put it

succinctly, there ought to be clear proof that the order to be obeyed was clear, unambiguous and with full knowledge of the content of the order it was disobeyed.

17. The onus is heavily on the individual who alleges disobedience to establish the ingredients of the offence beyond reasonable doubt.. In fact, a Court of Law is empowered under Order 39 Rule 2 A of the Civil Procedure Code to take away the liberty of a person and order detention of the person who violates the order in Civil Prison and this power is undoubtedly penal in character, in the considered opinion of this court."

9. As per the dictum laid down by the Hon'ble High Court of Madras in the above case, the petitioner has to prove that the Respondent had willfully disobeyed the order of this court, after having knowledge of the same. In the present case, the notice to the Respondent was served after 2 months from the date of passing of the order and the Photos that is filed along with this petition, bears the date that is 6 months after the passing of the Injunction Order. Therefore this court is of the opinion that the petitioner had not proved that only after having the knowledge of the Interim order, the Respondent had completed the building.

10. As per the above dictum laid down by the Hon'ble High Court, Madras, the onus is upon the Petitioners to establish the ingredients of the offence beyond reasonable doubt. But the Petitioners had not proved beyond the reasonable doubt that the Respondent had wilfully disobeyed the order of this court, after having the knowledge of the same. It is the contention of the Petitioners that the Respondent himself has admitted in his counter

that he is trying to alienate the suit property. But the Petitioners had not proved that the Respondent had alienated the suit property in contravention with the order of this court and therefore the contention of the Petitioners, is unsustainable. Hence for the foregoing reason this court is not inclined to allow this petition.

11. In the result, this petition is dismissed. No costs.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 29th day of July, 2022

District Munsif
Madurantakam

Petitioners side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam