

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.952 of 2003

Ibrahim

.. Petitioner/Plaintiff

vs.

1.Abdul Khader

2.Commissioner
Corporation of Chennai

3.Junior Engineer

(Both respondents 2 and 3 given up
in E.P.No.1678/2000 in O.S.No.5534/1992).. Respondents/Defendants

Revision Petition filed against the order dated 23.9.2002, passed in
E.P.No.1678/2000 in O.S.No.5534/1992, on the file of the X Assistant
Judge, City Civil Court, Chennai.

For Petitioner : Ms.A.Daoudh Ammal, of
M/s.N.A.W.Abdul Rahim.

For Respondents : Mr.R.Karunakaran, for R1.

ORDER:

This Revision Petition has been filed against the order
dated 23.9.2002, passed in E.P.No.1678/2000 in O.S.No.5534/1992, on the
file of the X Asst.City Civil Court, Chennai.

2. The decree holder in E.P.No.1678/2000 is the revision petitioner.

3. The revision petitioner filed O.S.No.5534/1992 on the file of the
XIV Asst. Judge, City Civil Court, Chennai and by judgment and decree
dated 13.12.1995, the 1st respondent/decreed holder was restrained by way of
permanent injunction from (1) obstructing the easementary rights of the
free flow of air and light (2) from proceeding with the construction work

in the suit schedule property and from putting up any windows or ventilators on the southern side wall of the suit property. Thereafter E.P. was filed by the decree holder/revision petitioner under Order 21 Rule 26(2) C.P.C. to arrest the 1st respondent/1st defendant for disobeying the decree passed against him in O.S.No.5534/92 dated 13.12.95.

4. The 1st respondent/judgment debtor filed a counter by stating that the windows and ventilators were existing prior to the filing of the suit and the air and light have not been obstructed and consequently no easementary rights have been affected at all.

5. The execution court by order dated 23.9.2002 dismissed E.P.No.1678/2000 and aggrieved by the same, the decree holder has filed the above C.R.P. Under Sec.115 of C.P.C.

6. Heard the learned counsel for the petitionr and the learned counsel for the 1st respondent. I have also gone through the documents filed in support of their submissions.

7. The execution court dismissed the E.P. on the sole ground that the decree holder did not procure any evidence to prove that the 1st respondent/judgment debtor put up offending construction thereby denying him the easementary right of air and light. The execution court has further held that when the 1st respondent/judgment debtor has specifically stated that no construction was put up by him after the decree in violation of the decree, the revision petitioner/decreed holder did not let in any evidence to disprove the same. When the decree-holder filed the execution petition under Order 21 Rule 26(2) of C.P.C. for ordering arrest of judgment debtor for disobeying the decree of injunction, the onus is heavily on the shoulders of the decree holder to prove with acceptable evidence that the judgment debtor has wilfully disobeyed the decree. When the evidence is lacking in this regard, the execution court cannot order arrest of a person and therefore I do not find any illegality nor infirmity in the order passed by the execution court.

8. in the result, the C.R.P. is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1. The Xth Assistant Judge,
City Civil Court, Chennai.104.
 2. The Registrar,
City Civil Court, Chennai - 104
 3. The Record Keeper,
V.R.Section,
High Court, Madras.
- 1 cc To Mr.R.Karunakaran, Advocate, SR.46223.

C.R.P. (NPD) 952/03.

AKM(CO)
RVL 18.10.2006



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