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Johnson vs Jose

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Court : Kerala

Decided On : Dec-19-2019

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : CRP/319/2018

Appellant : Johnson

Respondent : JOSE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL THURSDAY, THE 19TH DAY OF DECEMBER 2019 / 28TH AGRAHAYANA, 1941 CRP.No.319 OF 2018 AGAINST THE ORDER IN E.P.101/11 IN OS 288/2009 DATED 04-01-2018 OF MUNSIFF COURT,ALUVA REVISION PETITIONER/DECREE HOLDER/PLAINTIFF: JOHNSON AGED 49 YEARS S/O.CHAKKUNNI, CHITTINAPPILLY HOUSE, CHENGAL KARA, VADAKKUMBHAGAM VILLAGE, BY ADVS. SRI.K.J.SAJI ISAAC DR.ELIZABETH VARKEY SRI.JITHIN SAJI ISAAC RESPONDENT/JUDGMENT DEBTOR/DEFENDANT: JOSE, AGED ABOUT 65 YEARS, S/O.PAILY, CHITINAPPILLY HOUSE, CHANGAL KARA, VADAKKUMBHAGAM

VILLAGE, THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19.12.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Dated this the 19th day of December 2019

1. Petitioner/plaintiff has preferred the petition against the

order dated 4.1.2018 passed in E.P.No.101/2011 in O.S.

No.288/2009. The facts in brief are, the petitioner/plaintiff instituted a suit for injunction against the respondent/ defendant from encroaching into the plaint schedule property or causing obstruction in the peaceful enjoyment. On contest the suit was decreed. Petitioner/plaintiff alleged that the 1 st defendant trespassed into his land and tried to pluck coconuts and nutmegs from his property. Aggrieved by the same, he filed an application dated 30.9.2011 to the concerned Police Station. Another complaint was also made on 2.10.2011 and the judgment debtor was called to the Police Station and warned. But again he trespassed into the property. Many attempts were made and finally the petitioner moved an application under Order XXI Rule 32. In support of the aforementioned claim, brought on record copy of the

judgment in O.S. Ext.A1 and copies of petitions submitted

before the Police Station; Ext.A2 dated 30.9.2011, Ext.A3 dated 21.11.2011, Ext.A4 dated 12.1.2012, Ext.A5 dated 5.5.2017 and original receipts thereof. Ext.A6 is copy of the petition submitted before the Chief Minister. These were during the pendency of the execution application. But despite that the execution application has been dismissed. The impugned order is not sustainable in the eye of law as no person can be permitted to flout the order of injunction. Otherwise there would not be

any regard or respect to the orders. In fact it was willful disobedience. Non appointment of a commission to show that the judgment debtor has violated the decree cannot be a ground against the plaintiff. Sufficient opportunity ought to have been given for getting the evidence.

2. Per contra, the counsel for the respondent contested the

judgment and decree of the trial court in A.S.No.186/2011.

The order was set aside by the first appellate court. However, since this court has reversed the finding, the respondent approached the Hon'ble Supreme Court and the matter is pending there with an interim order that the decree cannot be executed until and unless the stay is not vacated. All these documents have been brought on record as Exs.B1, B2, B3 and B4. In the absence of any proof that the judgment debtor has violated the decree, the execution application under Order XXI Rule 32 was liable to be dismissed.

3. I have heard learned counsel for the parties, perused the

materials on record. The facts noticed above are not in dispute. It is a matter on record that the SLP is pending and there is an interim stay. When the decree is under challenge, violation thereof cannot be portrayed until and unless the decree becomes finalised. Even otherwise, no evidence has been placed on record like examination of commission, to establish alleged violation. In my view, execution application under Order XXI rule 32 was prematured. No grounds are made out and the revision is dismissed. Sd/- AMIT RAWAL, Judge kkb.

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