



C.R.P.(MD)No.2743 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2023

Pronounced on : 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2743 of 2023

and

C.M.P.(MD)No.14276 of 2023

1. S.Periyamuniyandi

2. P.Santha

... Petitioners

Vs.

1. S.Dharmalingam

2. S.Chinnapandi

... Respondents

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to pass an order allowing the civil revision petition by setting aside the impugned order passed in E.P.No.2 of 2020 in O.S.No. 122 of 2010 dated 09.06.2023 on the file of the District Munsif Court, Madurai Taluk.

For Petitioners : Mr.M.Ponniah

For Respondents : Mr.Sai.C.R.Janarthanan



C.R.P.(MD)No.2743 of 2023

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.2 of 2020 in O.S.No.122 of 2010 dated 09.06.2023, on the file of the District Munsif Court, Madurai Taluk, Madurai.

2. The respondents/decreed holders/plaintiffs have filed the suit against the revision petitioners/judgment debtors/defendants in O.S.No. 122 of 2010, claiming permanent injunction restraining the revision petitioners/judgment debtors/defendants and their men from any manner trespassing, disturbing or interfering with the peaceful possession and enjoyment of the suit property. Subsequently, the plaint was amended and the relief of mandatory injunction came to be claimed directing the revision petitioners/judgment debtors/defendants to remove the constructions made in the suit pathway.

3. It is not in dispute that the revision petitioners/judgment debtors/defendants, after filing the written statement, have not chosen to participate in the trial and as such, they were set *ex parte* and after recording the respondents/decreed holders/plaintiffs' side evidence and



C.R.P.(MD)No.2743 of 2023

hearing the arguments made by the respondents/decreed holders/plaintiffs' side, the learned District Munsif, Madurai Taluk, has passed a judgment and decree dated 18.11.2016 granting the reliefs of permanent injunction and mandatory injunction as prayed for. Since the decree was not complied, the first respondent/decreed holder/second plaintiff has laid the execution petition in E.P.No.2 of 2020 to enforce the decree for mandatory injunction. The revision petitioners/judgment debtors/defendants have entered into appearance and filed their counter statement stating that the suit property was owned by them and was in their lawful possession, that they have not made any trespass, that the respondents/decreed holders/plaintiffs, by raising false pleadings in the plaint and by producing false evidence, have obtained the judgment and decree, that the revision petitioners/judgment debtors/defendants have already filed an appeal along with an application to condone the delay in filing the appeal in I.A.No.33 of 2021 and the same is pending and that the first respondent/decreed holder/second plaintiff, by suppressing the pending of the appeal and by suppressing the material facts, has filed the execution petition and as such, the same is legally not maintainable.



C.R.P.(MD)No.2743 of 2023

WEB COPY

4. The revision petitioners/judgment debtors/defendants have filed an additional counter statement raising additional defence that one of the decree holder Chinnapandi had died and the other decree holder has simply filed a Memo dated 21.03.2022 exonerating the deceased decree holder, that the first respondent/decreed holder/second plaintiff has neither filed any proper application nor obtained any orders from the concerned Court, that the first respondent/decreed holder/second plaintiff, in his execution petition by informing that there was no appeal challenging the judgment and decree which is sought to be executed and as such, is guilty of suppression, that the first respondent/decreed holder/second plaintiff in the execution petition has not furnished the correct particulars of the encroachment allegedly made and that therefore, the execution petition itself is liable to be dismissed.

5. The Executing Court, after enquiry, has passed the impugned order dated 09.06.2023 rejecting the objections raised by the revision petitioners/judgment debtors/defendants, has directed the removal of encroachment and for delivery of the property. Aggrieved by the impugned order, the judgment debtors have preferred the present revision.



C.R.P.(MD)No.2743 of 2023

WEB COPY

6. The learned counsel appearing for the revision petitioners/judgment debtors/defendants would submit that the Court Amin has returned the delivery warrant for want of identification of the property and for that purpose, requires the help of a Surveyor and Village Administrative Officer (VAO) and that since the property was in locked condition, requires orders for break open and also for police help.

7. The main contention of the revision petitioners/judgment debtors/defendants is that the suit property shown in the decree is incorrect and there was no specific measurement in respect of the alleged encroachment in the property of the first respondent/decreed holder/second plaintiff and that the Executing Court has failed to consider that statutory appeal is pending for adjudication.

8. Regarding the contention of the incorrect description of property and want of specific measurement in respect of the alleged encroachment, as rightly pointed out by the learned counsel appearing for the respondents/decreed holders/defendants, the learned trial Judge has specifically granted the relief of mandatory injunction with a specific direction and the same is extracted hereunder for better appreciation;



C.R.P.(MD)No.2743 of 2023

WEB COPY

□3. வாதிகளுக்கு மட்டும் தனித்து பாத்திய அனுபவப்பட்ட நடைபாதை சொத்தில் இந்த நிர் பிரதிவாதிகள் கிழமேலடி வடபுறம் 1□ அடி தென்புறம் 2□ அடிக்கு சுமார் 42 அடி நீளமுள்ள சொத்தினை ஆக்கிரமிப்பு செய்து அதில் சுமார் 20 அடி உயர சுவர் எழுப்பியிருப்பதை பிரதிவாதிகள் தங்களது செலவில் தீர்ப்புரை ஏற்பட்ட ஒருமாத காலத்தில் அப்புறப்படுத்த வேண்டும் என்றும் தவறும் பட்சத்தில் நீதிமன்ற அமீனா மூலம் பிரதிவாதிகள் ஆக்கிரமிப்பு செய்து உள்ள சொத்தினை இடித்து அப்புறப்படுத்த செயலுறுத்துக் கட்டளை உத்திரவு வழங்கி உத்திரவிடப்படுகிறது.□

9. The very contention of the revision petitioners/judgment debtors/defendants that the description of the property shown in the decree is not correct and there are no specific measurement with regard to the alleged encroachment is absolutely devoid of substance and the same is liable for rejection.

10. Regarding the pendency of the appeal, even according to the revision petitioners/judgment debtors/defendants, no appeal is pending as of now. The revision petitioners/judgment debtors/defendants have only alleged that they have filed an application to condone the delay in filing the appeal and the same is pending in I.A.No.33 of 2021. As rightly



C.R.P.(MD)No.2743 of 2023

contended by the learned counsel appearing for the respondents/decreed holders/plaintiffs, the suit was decreed on 18.11.2016 and even according to the revision petitioners/judgment debtors/defendants, they have preferred the appeal along with the delay condonation application in 2021 after the lapse of five years since the date of judgment and decree.

11. The Executing Court has specifically observed that taking note of the time taken for filing the counter statement and for enquiry by the revision petitioners/judgment debtors/defendants, it is clearly evident that they have been dragging the matter intentionally and that they have not utilized the several opportunities granted to them in the interest of justice.

12. Since the second respondent/decreed holder/first plaintiff had died, the first respondent/decreed holder/second plaintiff has filed a Memo exonerating him and the Executing Court has rightly recorded the same. Admittedly, the respondents/decreed holders/plaintiffs are brothers and obtained the decree in their favour. Except the above, the revision petitioners/judgment debtors/defendants have not canvassed any other valid reason or objection to impugn the order under challenge.



C.R.P.(MD)No.2743 of 2023

WEB COPY

13. Considering the above, this Court concludes that the impugned order directing for removal of the encroachment and for delivering the property, cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

14. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

20.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif Court,
Madurai Taluk.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2743 of 2023



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C.R.P.(MD)No.2743 of 2023

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2743 of 2023
and
C.M.P.(MD)No.14276 of 2023

Dated :20.12.2023