

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2015

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(NPD).No.2890 of 2015
and M.P.No.1 of 2015

Mohanasundaram

... Petitioner

Vs.

1.Perumayee

2.Venkatesan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.04.2015 made in R.E.A.No.36 of 2015 in R.E.P.No.244 of 2014 in O.S.No.242 of 2004 on the file of the Principal District Munsif, Salem.

For Petitioner : Mr.A.Thiyagarajan

For Caveator : Mr.K.Selvaraj

ORDER

Challenging the order passed in R.E.A.No.36 of 2015 in R.E.P.No.244 of 2014 in O.S.No.242 of 2004 on the file of the Principal District Munsif, Salem, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.242 of 2004 for declaration, permanent injunction and mandatory injunction. The defendants contested the suit before the trial Court and the trial Court dismissed the suit.

3. Aggrieved over the judgment and decree passed in O.S.No.242 of 2004, the plaintiffs preferred an appeal in A.S.No.124 of 2011 on the file of the Principal Sub Court, Salem. The Lower Appellate Court, after taking into consideration the case of both parties, reversed the judgment and decree of the trial Court and decreed the suit. Aggrieved over the same, the 1st defendant preferred a Second Appeal in S.A.No.75 of 2013 before this Court and this Court, by judgment dated 20.08.2014, dismissed the Second Appeal and confirmed the judgment and decree of the Lower Appellate Court.

4. Pursuant to the decree granted in favour of the plaintiffs, they filed an Execution Petition in R.E.P.No.244 of 2014 on the file of the Principal District Munsif Court, Salem. The 1st defendant filed an application in R.E.A.No.36 of 2015 under Section 47 of the Civil Procedure Code stating that the decree granted in O.S.No.242 of 2004 created confusion over the identity of the disputed portion and without measuring the property of the petitioner and the respondents by an Advocate Commissioner, the decree cannot be executed in the execution proceedings. The plaintiffs filed their counter and contested the application. The Execution Court, taking into consideration the case of both parties, dismissed the application.

5.It is pertinent to note that this Court, while dismissing the Second Appeal in S.A.No.75 of 2013, observed that when there has been a finding of facts reached on the basis of the categorical admission made by the 1st defendant, the Second Appeal cannot be entertained and the same stands dismissed. This Court, also took into consideration the documents marked by the parties before the trial Court and also the admission made by D.W.1, who deposed that 175 sq.ft. is forming part of the land in 1050 sq.ft. of land purchased by the 1st plaintiff and passed on to the 2nd plaintiff under the Sale Deed dated 07.11.2007. Taking note of the admission made by D.W.1, the Lower Appellate Court as well as this Court had decreed the suit.

6.The learned counsel for the petitioner submitted that the boundary mentioned in the suit schedule is incorrect, therefore, the same cannot be executed. That apart, the learned counsel also submitted that the plaintiffs can take possession of the property as found in their Sale Deed for the reason that in the suit schedule, the boundary has been wrongly mentioned.

7.The stand taken by the learned counsel for the petitioner cannot be accepted for the reason that the issue with regard to the suit schedule has already been decided by this Court as well as the Lower Appellate Court in favour of the plaintiffs.

8.It is needless to say that the Execution Court is bound by the decree passed in the suit. As rightly observed by the Execution Court, since the description of the property was given by the decree holder, it is for the decree holder to execute the decree for mandatory injunction with the given description of the property through Court.

9.Since the issue was already decided by this Court as well as by the Lower Appellate Court by decreeing the suit filed by the respondents, Execution Court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the same is dismissed.

10.It is needless to say that the respondents/plaintiffs are entitled to execute the decree as per the decree granted in O.S.No.242 of 2004. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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23.07.2015

To

The Principal District Munsif,
Salem.

M. DURAISWAMY,J.

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