

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2016

Pronounced on : 26.08.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD)No.3141 of 2012

Ulagalandar

.. Petitioner

Versus

Subramanian

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Order and Decreetal Order dated 27.07.2012, passed in E.P.No.3714 of 2011 in O.S.No.3280 of 1999 on the file of X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Natana Rajan

For Respondent : Mr.C.T.Mohan
for Mr.R.Vijayaraghavan

ORDER

Heard the submissions of Mr.Natana Rajan, learned counsel appearing for the Revision Petitioner and Mr.C.T.Mohan for R.Vijayaraghavan, learned counsel appearing for the respondent.

2.The present Civil Revision Petition is preferred challenging the order passed by the X Assistant City Civil Court, Chennai in E.P.No.3714 of 2011 in O.S.No.3280 of 1999 whereby the Court has dismissed the E.P. filed under Order XI Rule 32 for directing the respondent to remove the encroached portion in 'B' Schedule of the property.

3.The Original Suit was filed by the petitioner for mandatory injunction and for permanent injunction and an ex-parte decree was passed on 14.06.2006 directing the respondent to remove the encroachment over and above the open space on the northern side of the Suit Property.

4.When the E.P. was heard, it was brought to the notice of the Court that I.A.No.10264 of 2007 to amend the decree was filed by the decree holder and accordingly, the decree was also amended as per the order dated 30.11.2010. The Court has without considering the facts properly has dismissed the E.P. by stating that even after the amendment of the Decree, the decree holder has not obtained the fresh amended copy of the decree containing with the Commissioner report and plan.

5.The Court has also stated that without the Report C5 to C7, the decree in execution was not a valid one and even if direction is issued by this Court, the Court amin cannot execute the decree in the absence of Exhibits-C5 to C7 and accordingly dismissed the E.P.

6.Challenging the dismissal, it has been contended by the learned counsel appearing for the Revision Petitioner that the Execution Court has failed to note that it cannot go beyond the decree passed in O.S.No.3280 of 1999 and has submitted that instead of dismissing the above E.P. for non-filing of Exhibits-C5 to C7, the Court ought to have directed the decree holder to produce the certified copy of Exhibits-C5 to C7 even before passing the order and thereby, given a proper opportunity for the petitioner to clarify regarding the executability of the decree.

7.It has also been submitted by the learned counsel that the order in O.S. is not challenged and has become final and the Execution Court has erred in holding that without Exhibits-C5 to C7, the decree is not executable especially when the same is available in the Court bundle.

8.To canvas his case, he would rely upon the judgment of the Madurai Bench of Madras High Court in ***Meenakshi Sundaram vs. Seemaichamy & Ors, 2015 (5) MLJ 773*** wherein, following the decisions of different Courts, it has been held that the Rule is quite established that the Execution Court cannot go beyond the decree and question its correctness and in the said judgment, the Court has set aside the order of the Execution Court and directed to consider the decree and consequently directed the Court to take a decision regarding the execution of the decree. One fact that remains clear from the above said narration is that the execution Court could have very well afforded an opportunity for the Revision Petitioner to produce the necessary documents to satisfy itself regarding the executability of the decree.

9.Therefore, I am inclined to pass the following orders:

(a) the order passed in E.P.No.3714 of 2011 in O.S.No.3280 of 1999 by the X Assistant City Civil Court, dated 27.07.2012 is set aside and the Civil Revision Petition stands allowed.

(b)the learned Executing Judge is directed to consider the decree in O.S.No.3280 of 1999 in the light of the Judgment and Commissioner's report in I.A.No.10264 of 2007 and to take a decision as to whether the decree is executable and pass appropriate orders as expeditiously as possible within a period of 8 weeks from the date of receipt of a copy of this order.

10.Hence, the Civil Revision Petition is allowed with the above terms. No costs.

26.08.2016

vs

Index:Yes/No.

Internet:Yes/No.

To

The X Assistant Judge, City Civil Court,
Chennai.

M.V.MURALIDARAN, J.

VS

**PRE-DELIVERY ORDER MADE IN
CRP(NPD)No.3141 of 2012**

26.08.2016