

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3561 of 2011
& M.P.No.1 of 2011

1.Dhandapani
2.Samivel
3.Narayanasamy

.. Petitioners

Vs.

1.Sekar
2.Murugadoss

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 24.06.2011 made in E.P.No.91 of 2008 in O.S.No.385 of 2003 on the file of the learned Principal District Munsif, Tirukoilur.

For Petitioners : Mr.N.Suresh

For RR1 to 2 : Mr.V.Raghavachari

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 24.06.2011 made in E.P.No.91 of 2008 in

O.S.No.385 of 2003 on the file of the learned Principal District Munsif, Tirukoilur.

2. The petitioners are the defendants 1 to 3 and judgment debtors, and respondents are the plaintiffs and decree holders, in O.S.No.385 of 2003 and E.P.No.91 of 2008 respectively. The respondents 1 and 2 claimed easementary right over 'B' schedule property, for permanent injunction restraining the petitioners and three others from interfering with their access to A schedule property along with their carts and cattle through B schedule property and mandatory injunction directing the petitioners and others to remove the obstruction put up by them.

3. After contest, the suit was decreed by the judgment and decree dated 04.03.2005. In the decree, report of the Advocate Commissioner and plan was not mentioned and therefore, the respondents filed I.A.No.1623 of 2006 for amendment of the decree. The petitioners did not oppose the said application. The said application was allowed on 06.02.2007. Subsequently, amended copy of the decree along with the report and plan was issued to the respondents. The respondents filed E.P.No.91 of 2008 on

23.04.2008 to execute the decree.

4. The petitioners filed counter and opposed the said E.P. on the ground that the E.P. filed in the year 2008 is barred by limitation. The respondents ought to have impleaded all the persons mentioned in the Advocate Commissioner's report, who have encroached the porombokke land and respondents have not mentioned, in which portion the petitioners have encroached and therefore, the decree is inexecutable. The petitioners filed E.A.No.446/2009 in E.P.No.91 of 2008 under Section 47 CPC stating that the decree is inexecutable. The said application was dismissed on merits by the order dated 30.03.2011.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed the execution petition.

6. Against the order dated 24.06.2011 made in E.P.No.91 of 2008, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and

respondents and perused the materials available on record.

8. It is well settled that the Execution Court cannot go beyond the decree. It has to execute the decree as granted by the trial Court. In the present case, the petitioners have filed I.A.No.446 of 2009 under Section 47 CPC claiming that the decree is inexecutable. After contest, the said application was dismissed on 30.06.2011. Challenging the same, the petitioners have not taken any further proceedings and the said order has become final. The contention of the learned counsel for the petitioners that E.P is barred by limitation is without merits and contrary to the facts. The decree passed on 04.03.2005. Originally, the decree was issued to the respondents without enclosing the Commissioner's report and sketch. The respondents filed I.A.No.1623 of 2006 for inclusion of the same. The said application was allowed on 06.02.2007 and corrected copy of the decree enclosing Advocate Commissioner's report and plan was issued to the respondents. Subsequently, the respondents have filed E.P.No.91 of 2008 within a period of three years. In the said E.P, the respondents have sought for removal of encroachment put up by the petitioners and others marked red in

the Advocate Commissioner's report.

9. In view of the same, the contention of the learned counsel for the petitioners that the respondents have not specified the portion of the encroachment to be marked has no merits. In the circumstances, the Civil Revision Petition is devoid of merits.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2017

Index : Yes/No

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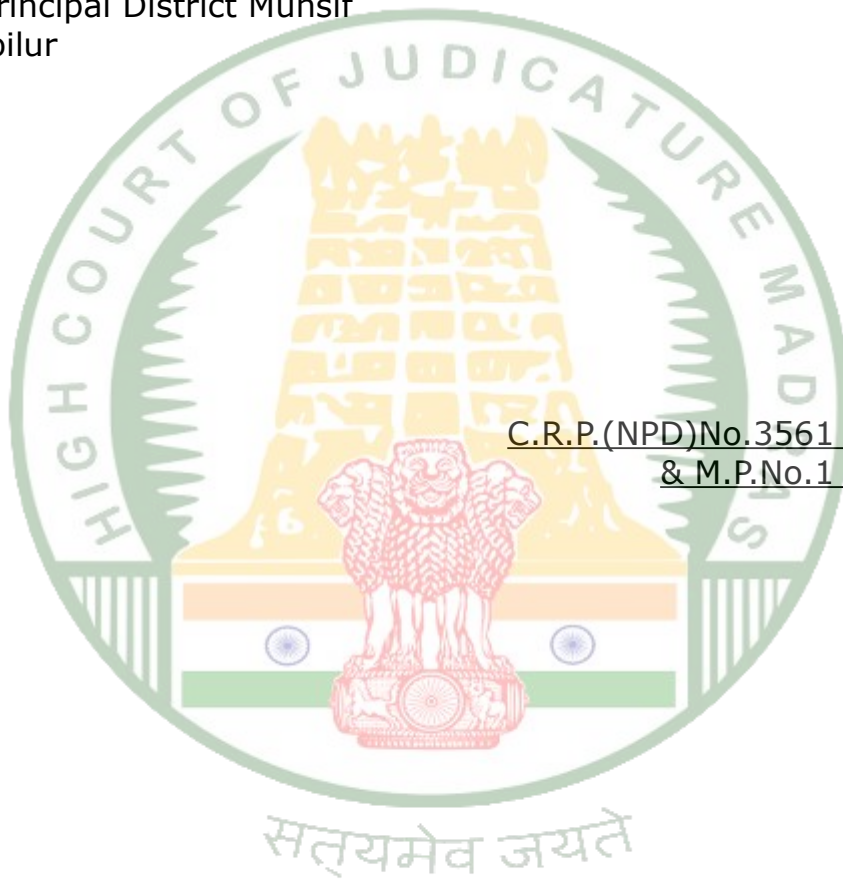
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V.M.VELUMANI, J.

gsa/kj

To

The Principal District Munsif
Tirukoilur



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