

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**CRP (NPD) No.4991 of 2014 and**

**C.MP.No.1 of 2014**

R.Shanmugam

...Petitioner

versus

Palanisamy

...Respondent

**PRAYER:** Civil Revision Petition filed Section 115 of the Code of Civil Procedure, challenging the Fair and Decretal Order dated 15.09.2014 in E.A.No.39 of 2014 in E.P.No.47 of 2012 in O.S.1125 of 1982 passed by the learned Principal District Munisif Court, Erode.

For Petitioner : Mr.T.Pandiyan for  
Mr.A.M.Venkatakrishnan

For Respondent : Mr.I.C.Vasudevan

**ORDER**

This Civil Revision Petition is directed against the order dated 15 September 2014 in E.A.No.39 of 2014 in E.P.No.47 of 2012 in

O.S.No.1125 of 1982, dismissing the application filed by the petitioner to remit the report to the Advocate Commissioner and file a fresh report and plan.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the judgment debtor in E.P.No.47 of 2012. The respondent obtained a decree for removal of encroachment. Since there was no removal at the instance of the petitioner, Execution Petition was filed to execute the decree. Before the Trial Court, the petitioner took a stand that the suit cart track has already been dis-used and as such, there is no need for removal.

4. The Executing Court issued a Commission at the instance of the respondent. The Advocate Commissioner submitted his report. The petitioner, thereafter, filed application to set aside the report and remit the matter to the very same Commissioner for filing fresh report. The application was dismissed. It is the said order, which is challenged in this Civil Revision Petition.

5. The petitioner has taken up certain vital contentions with regard to the report filed by the Advocate Commissioner. The moot question is whether there is an obstruction still to be removed. Since the report filed by the Advocate Commissioner was not clear in that respect, the petitioner filed the application to set aside the report.

6. The learned Trial Judge dismissed the application on the ground that even if some irrelevant facts were noted by the Advocate Commissioner, the same cannot be corrected by remitting the report and the remedy is only to take up the matter during the course of enquiry.

7. In case, the Commissioner has made certain incorrect facts or proceeded beyond the brief and made certain observations with regard to the matter, it is for the Court to remit the matter for filing fresh report. I am therefore of the view that the petitioner must succeed.

8. In the result, the order dated 15 September 2014 is set aside. The application in E.A.No.39 of 2014 in E.P.No.47 of 2012 is allowed as

prayed for.

**K.K.SASIDHARAN.,J.**

(svki)

9. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

**27.03.2017**

svki

To  
The Principal District Munisif Court,  
Erode.

**CRP (NPD) No.4991 of 2014**

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