

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4616 of 2012
M.P.No.1 of 2012

1.Palanivel

2.Govindammal

3.Ayyanar

.. Petitioners

Vs.

1.Valliammal

2.Thirunavukkarasu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned District Munsif of Panruti, dated 16.07.2009, allowing E.A.No.168 of 2007 in O.S.No.357 of 2005.

For Petitioners : Mr.N.Gururaj

For R1 : M/s.R.Meenal

ORDER

This Civil Revision Petition has been filed against the fair and decretal order of the learned District Munsif of Panruti, dated 16.07.2009, allowing E.A.No.168 of 2007 in O.S.No.357 of 2005.

2. The petitioners are defendants 2, 7 and 8, first respondent is the plaintiff and second respondent is the 3rd defendant in O.S.No.3357 of 2005 on the file of the District Munsif, Panruti. The first respondent/plaintiff filed the said suit against the petitioners and second respondent for declaration and permanent injunction. The said suit was decreed as prayed for. The first respondent/plaintiff filed E.A.No.168 of 2007 to issue direction to Kadampuliyur Police to provide police protection for use of suit property as a pathway as per the decree obtained by her. According to the first respondent/plaintiff, the petitioners and second respondent are preventing her from using the pathway in spite of the decree obtained by her.

3. The second petitioner filed counter affidavit on 17.09.2007, which was adopted by the second respondent and petitioners 1 and 3. In the counter affidavit, they resisted the contention of the first respondent on the ground that fencing was in existence even at the time of filing of the suit and first respondent has not stated as to which side she has claimed the pathway and without describing any extent for the same in the plaint, she has conducted the suit. In view of the same, the decree is inexecutable and prayed for dismissal of the plaint.

4. The learned Judge, considering the fact that the decree was passed in favour of the first respondent after contesting on merits, allowed the application, holding that the petitioners are not entitled to contend that the decree obtained is not executable.

5. Against the said order dated 16.07.2009, allowing E.A.No.168 of 2007 in O.S.No.357 of 2005, the present Civil Revision Petition is filed by the petitioners.

6. When the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the respondents submitted that pending Civil Revision Petition, the first respondent/plaintiff purchased the suit property from the petitioners and therefore nothing survives in the Civil Revision Petition. The learned counsel appearing for the petitioners denied the same.

7. Heard the learned counsel appearing for the petitioners and first respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioners have admitted that the decree has been passed in favour of the first respondent with regard to her right to use pathway to

reach her house. The petitioners have not filed any appeal against the said judgment and decree and it has become final. In view of the same, the petitioners cannot prevent first respondent from using the pathway as mentioned in the decree. The learned Judge, considering all the above facts, allowed the E.A. There is no illegality or irregularity warranting interference with the order of the learned trial Judge dated 16.07.2009.

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

15.09.2017

Index: Yes/No

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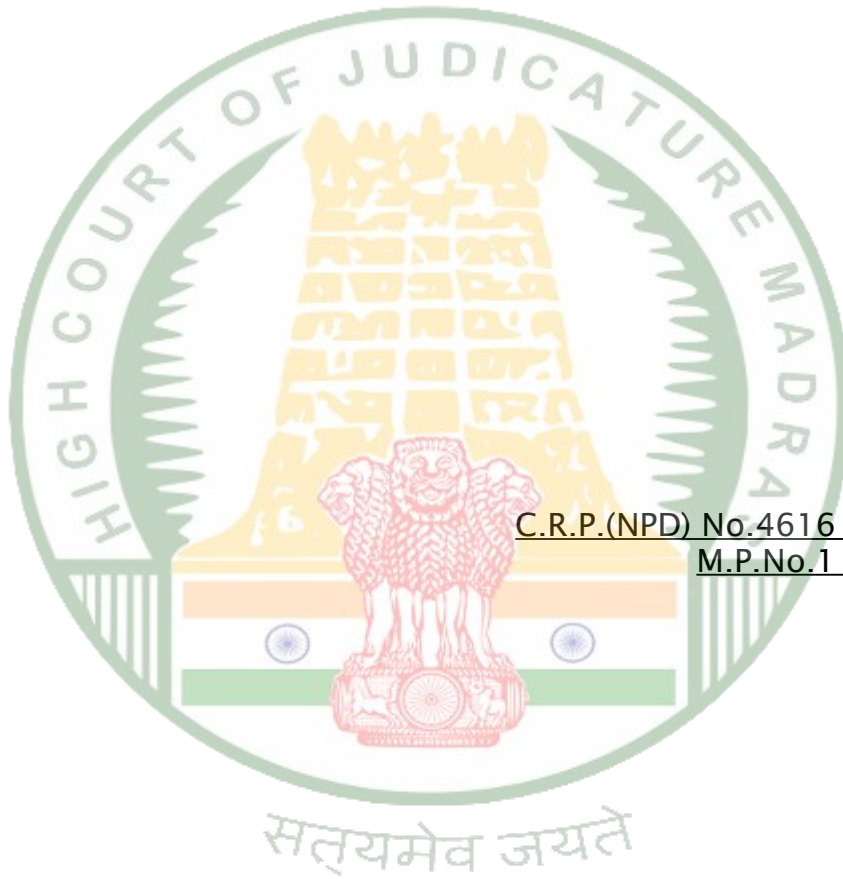
To

The District Munsif,
Panruti

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V.M.VELUMANI,J.

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