



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD)No.228 of 2017 (NPD)

D.Devasena

.. Petitioner/Petitioner/Decree Holder/
2nd Plaintiff

Vs.

1.Tamil Nadu State Transport Corporation

Kottam III, Nagercoil,
Rep. By its General Manager,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2. Aravind

Divisional Manager,
Tamil Nadu State Transport Corporation,
Kottam III, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

.. Respondents/Respondents/
Judgment Debtors/Defendants

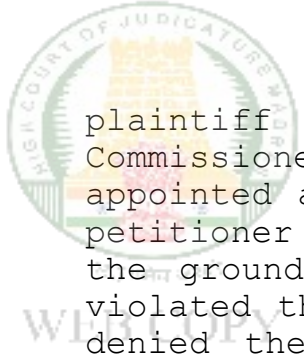
PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C to set aside the Fair and Decreetal order, dated 30.09.2016 passed in E.P.No.41 of 2012 in O.S.No.743 of 1997 on the file of Principal District Munsif, Nagercoil by allowing this Civil Revision Petition with cost.

For Petitioner : Mr.D.Nallathambi

ORDER

This petition has been filed by the petitioner to set aside the Fair and Decreetal order, dated 30.09.2016 passed in E.P.No.41 of 2012 in O.S.No.743 of 1997 by the Principal District Munsif, Nagercoil.

2.The petitioner is the second plaintiff in the suit. She along with one Balasubramaniam filed suit in O.S.No.743 of 1997 before the Principal District Munsif Court, Nagercoil for permanent injunction not to obstruct the flow of water from 'A' and 'B' schedule property through 'C' schedule property. The said suit was decreed by the judgment and decree, dated 12.06.2003. The petitioner and other



plaintiff filed E.A.No.96 of 2012 for appointment of Advocate Commissioner. In the said application, an Advocate Commissioner was appointed and he inspected the property and filed his report. The petitioner filed E.P.No.41 of 2012 for arrest of the respondents on the ground that they have obstructed the water flow and thereby violated the decree passed in O.S.No.743 of 1997. The respondents denied the said allegations. The petitioner examined herself as P.W.1 and marked documents. The respondents also marked photographs of 'C' schedule property through P.W.1. The second respondent examined himself as R.W.1.

3.The learned Judge considering all the materials on record, oral and documentary evidence and arguments of the counsel for the parties dismissed the E.P.No.41 of 2012 holding that the petitioner has not proved that the respondents have violated the decree by obstructing the free flow of water.

4.Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition is filed.

5.The learned counsel appearing for the petitioner submitted that the petitioner proved that the respondents have obstructed free flow of water. The learned Judge ought to have viewed the violation of decree passed by the competent Court. The report of the Advocate Commissioner clearly shows that Ramp for the purpose of moving vehicle put up by the respondents clearly shows that obstruction of water by respondent. The reasoning of the learned Judge for dismissing the E.P., that the petitioner has not given any specific dates of obstruction, is not correct.

6.I have heard the learned counsel appearing for the petitioner and perused all the materials on record.

7.From the materials, it is seen that the petitioner has not specifically mentioned from when the respondents are obstructing the free flow of water and thereby, violated the decree. The learned Judge by considering the report of the Advocate Commissioner concluded that there is no obstruction by respondents preventing free flow of water as claimed by the petitioner. The learned Judge also has considered the photographs marked by the respondents and dismissed the E.P. The learned Judge has properly appreciated all the materials on record and dismissed the application. There is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR(AE)

/TRUE COPY/



To

The Principal District Munsif,
Nagercoil.

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+1CC TO MR. D.NALLA THAMBI, ADVOCATE, SR NO.5913

AM

MAS/MR:20.02.2017:3P/3C

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03.02.2017