

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

**CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**

**C.R.P.(NPD) No.2021 of 2010
and
C.M.P.No.1 of 2010**

Doss Petitioner

Vs.

1. Vedhanayagam

2. Singaru

3. Kunjithapatham

4. The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.

5. Government of Tamilnadu represented
by its District Collector, Nagapattinam.

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and decretal order passed in E.A.No.123 of 2009 in E.P.No.194 of 2008 in O.S.No.271 of 2003 on the file of Additional District Munsif, Mayiladuthurai dated 08.04.2010 and allow the said EA.

For Petitioner	:	Mr.S.Sounthar
For Respondents 1 to 3	:	A.Muthukumar
For Respondents 4 & 5	:	No Appearance

ORDER

The instant CRP has been filed by the 1st defendant in the suit. By judgment and decree dated 03.12.2004, passed by Additional District Munsif Court, Mayiladuthurai, in O.S.No.271/2003, the respondents 1 to 3 obtained decree against the petitioner and others directing the petitioner to remove the obstruction from the pathway and restore to the pathway to its original position.

2. Against the judgment and decree dated 03.12.2004, the revision petitioner filed an appeal in A.S.No.114 of 2005 before the Sub-Court, Mayiladuthurai, which was also dismissed on 27.02.2006. Therefore, the judgment and decree dated 03.12.2004, passed against the petitioner has become final.

3. The respondents 1 to 3 filed E.P.No.194 of 2008 before the Additional District Munsif Court, Myiladuthurai to execute the judgment dated 03.12.2004, against the petitioner. An Advocate Commissioner was also appointed by the executing Court. E.A.No.123 of 2009 was filed by the petitioner/judgement debtor stating, he has complied with the judgment and decree dated 03.12.2004, by

removing the encroachment and he relied on the letter dated 26.02.2009 of the R.D.O., the fourth respondent herein.

4. The learned counsel for the petitioner also drew the attention of this Court to the letter dated 26.02.2009 and submitted that the R.D.O., has also confirmed that the petitioner has removed the encroachment.

5. On a perusal of the letter, it is found that the encroachment alone was removed but it does not state that the pathway was restored to its original position. Since there was a dispute before the executing Court, whether the decree was complied with or not by the petitioner, an Advocate Commissioner was appointed by the Court to find out whether the petitioner has complied with the decree dated 03.12.2004 or not. The Advocate Commissioner has filed a report dated 22.02.2010, which was placed before this Court by the learned counsel for the respondent. As seen from the Advocate Commissioner's report, it is noticed that sketch was also attached by the Advocate Commissioner along with his report. As seen from the report and the sketch, it is noticed that the petitioner has not complied with the judgment dated 03.12.2004 in entirety. As per the sketch,

ABCD is the pathway.

5. The Advocate Commissioner's report has stated that the pathway has not been restored to its original position. The plants put up by the petitioner and a fence are still in place in the pathway. As per the judgment and decree, the entire pathway has to be cleared by the petitioner and restored back to its original shape.

6. The learned counsel for the petitioner submits that the respondents 1 to 3 are attempting to demolish the toilet and cattle shed belonging to the petitioner which is outside the suit schedule property, which is denied by the learned counsel for the respondent.

7. This Court after having heard the rival submissions and after going through materials placed on record including the Advocate Commissioner's report, as well as the sketch attached to it is of the considered view that the judgment dated 03.12.2004, has not been executed in entirety and therefore, the submission made by the learned counsel that the petitioner has complied with the decree dated 03.12.2004 is not correct. But the respondents 1 to 3 can execute the decree only within the boundaries of the suit schedule property which

is the pathway as described in the plan and the sketch submitted by the Advocate Commissioner as ABCD and not beyond that. The petitioner has also filed the counter in the main execution petition in E.P.No.194/2008.

8. This Court finds that there is no legal infirmity, illegality and material irregularity in the order passed by the executing Court in E.A.No.123/2009. This Court directs the executing Court to consider the counter statement filed by the petitioner before the executing Court and pass final orders within two months from the date of receipt of a copy of this order. While passing final orders, the executing Court shall ensure that the judgment and decree dated 03.12.2004 in O.S.No.271/2003 is executed only within the boundaries of the suit schedule property and not beyond it.

सत्यमेव जयते

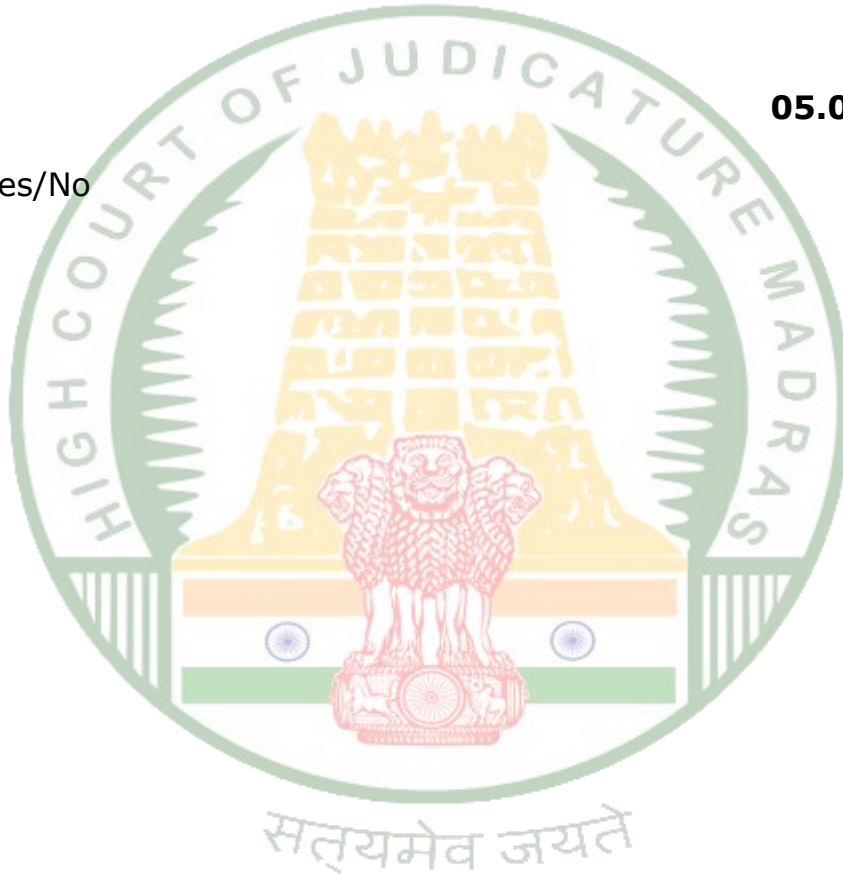
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9. This civil revision petition is disposed of accordingly.
Consequently, the connected miscellaneous petition is closed.
However, there shall be no order as to costs.

05.04.2018

Index: Yes/No

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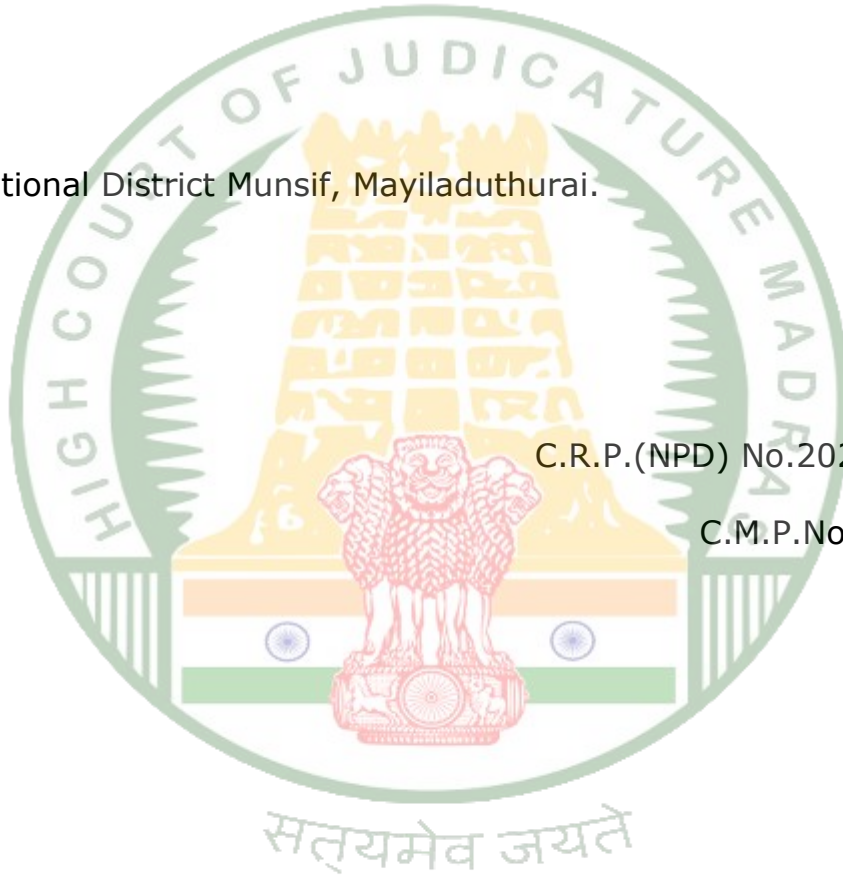
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ABDUL QUDDHOSE,J.

AT

To

The Additional District Munsif, Mayiladuthurai.



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