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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.08.2018

DELIVERED ON : 26.09.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C. R.P. (NPD) (MD) No.1509 of 2015

Annamalai Pillai (Died)
A.Somasundaram

.. Petitioner

Vs.

Periyasamy

.. Respondent

Prayer : This Civil revision petition is filed under Section 115 of C.P.C., to call for the records and set aside the fair and decreetal order dated 28.10.2014 in E.P.NO.50 of 2008 in O.S.No.306 of 1997 on the file of the District Munsif Court, Thuraiyur.

For Petitioner : Mr.H.Lakshmi Shankar

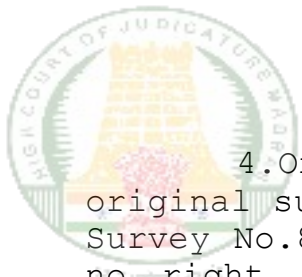
For Respondent : Mr.S.Muthukrishnan

ORDER

Heard Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioner and Mr.S.Muthukrishnan, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the order dated 28.10.2014 in E.P.NO.50 of 2008 in O.S.No.306 of 1997 on the file of the District Munsif Court, Thuraiyur.

3.The petitioner has filed the suit against the respondent for declaring title over the suit property in Survey No.898/1B and 898/1A and for permanent injunction in Survey No.898/1B and 898/1A and for mandatory injunction in Survey No.898/1B mentioned as X, X-1 in the plaint plan and for a prayer of right over the common wall in Survey No.898/1 and to irrigate the land through the plan mentioned ABCD channel in the petitioner's land in Survey Nos.898/5 and 898/4D and for a partition in Survey No.898/4C and to allot 21/24 share to the petitioner and the suit was decreed allowing the prayer of declaration in Survey No.898/1B and 898/1A and for the right over the common wall. Even after the decree, the respondents are blocking the water channel and are making encroachments in the property. The petitioner lodged a complaint before the Police on 23.07.2008 when they cut down the trees, in the suit property and prayed that the respondent is to be sent to civil prison for non-obeying the Court order.



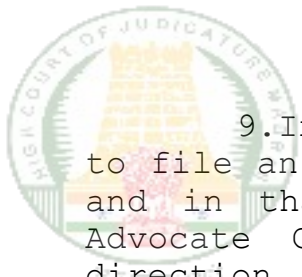
4. On the side of the respondent, it is stated that the original suit was for the above prayers and the prayer regarding the Survey No.898/1B was granted to the petitioner and in the Judgment, no right in Survey No.898/1B which is in the enjoyment of the respondent is not granted and the suit was dismissed as against the prayer nos.2, 5 and 6 and that no order was passed regarding the common wall. The respondent never interfere in the peaceful enjoyment of the property by the petitioner.

5. Records perused. In Survey No.898/1B. The petitioner has claimed only declaration and injunction and the petitioner has prayed for an order of mandatory injunction in Survey No.898/1B to the tune of east and west 15 m and North and South of 6 m and to remove the haystack.

6. On the side of the petitioner, it is stated that prayer for mandatory injunction is dismissed as there is no specific encroachment at the time of the Commissioner's visit. But the lower Court has granted an order of permanent injunction. After the decree, the respondent has encroached into the property. The dismissal of the prayer for mandatory injunction cannot allow the respondent to encroach upon the property. The respondent used to encroach upon by putting up haystack on the property of the petitioner. It is prayed that if needed the Court can appoint a Commissioner to fix the boundary line.

7. On the side of respondent, it is stated that no appeal is filed by the petitioner against the dismissal of the prayer for mandatory injunction. When did the respondent encroached upon the suit property is not specifically stated in the petition. The E.P. Court cannot go beyond the decree.

8. A perusal of the records reveals that the prayer for mandatory injunction is rejected as there is no encroachment as per the Commissioner's report in Ex.B5. On the side of the petitioner, it is stated that the respondent has admitted the encroachment and that in Ex.B2, the Advocate's notice sent by the respondent, it is admitted that the property is encroached. The copy of Ex.B5 and Ex.B2 is not filed before this Court. The clear case of the petitioner is that there was encroachment even at the time of filing the original suit. But the Commissioner has filed a report that there is no encroachment at the particular time. As there is no encroachment, the trial Court dismissed the prayer regarding the mandatory injunction. Unfortunately, the petitioner has not made any appeal against the order. The dismissal of the mandatory injunction does not confer any right to the respondent herein. The respondent has admitted that there is injunction order from a competent Court. It is the bounden duty of the respondent to obey the Court order. The statement of the respondent is that he is obeying the Court order.



9. In the above circumstances, the petitioner is given liberty to file an appeal against the dismissal of the mandatory injunction and in that appeal, the petitioner can pray for appoint of an Advocate Commissioner to fix the boundaries. With the above direction, this Civil Revision Petition is disposed of.

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Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-I)

To

The District Munsif , Thuraiyur

+1cc to Mr.H.LAKSHMI SHANKAR, Advocate, SR.No.86952

+1cc to Mr.H.S.MUTHUKRISHNAN, Advocate, SR.No.86845

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai. (2 COPIES)

C. R.P. (NPD) (MD) No.1509 of 2015
26.09.2018

MRN

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