



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.1692 of 2016

and

C.M.P. (MD) .No.8244 of 2016

1. P.Chinnu @ Pitchai
2. Chinnappan @ Varathan
3. Alagarsamy
4. Suseela
5. Amirthalakshmi
6. Navaneethammal
7. Karuthakannu @ Karuthamaniyammal .. Petitioners/
Respondents 5 to 11/
Respondents 5 to 11/ Defendants

vs.

1.N.C.Andiyappa Gounder .. 1st Respondent/Petitioner/
Petitioner/plaintiff
2.Ponnusamy
3.Akkandiammal .. Respondents 2 &3/ Respondents 3&4/
Respondents 3&4/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.04.2016 passed in E.A.No.20 of 2016 in E.P.No.105 of 1992 in O.S.No.94 of 1982 on the file of the District Munsif Court, Manapparai.

For Petitioners : Mr.G.Sridharan
For Respondent No.1 : Mr.P.Vairava Sundaram
For Respondents 2 & 3 : Mr.Raguvaran Gopalan
for Mr.K.Prabhakar

ORDER

The revision petitioners suffered a decree at the hands of the First Appellate Court in A.S.No.115 of 1984 on 05.09.1991. The said appeal arose out of O.S.No.94 of 1982 on the file of the District Munsif, Manapparai. The suit was one for declaration and recovery of possession in respect of five items. The First Appellate Court granted decree in respect of three items out of five. The decree was put to execution. It turned out that the Amena could not execute the decree because he could not identify the said three items. The warrant was returned. Thereafter, the description of property set out in the EP was allowed to be amended. Questioning the same, this Civil Revision Petition has been filed.



2. Heard the learned counsel appearing on either side.

3. As rightly pointed by the learned counsel for the petitioner, the executing Court cannot go behind a decree. When the original decree stood un-amended, the executing Court cannot proceed to permit execution in respect of properties not set out in the original decree. In this view of the matter, the order impugned in the Civil Revision Petition is set aside. The first respondent herein is permitted to file an application for amending the decree itself.

4. This Court does not express any opinion on the merits of the matter. As and when such an application was filed under Sections 153 CPC and 151 CPC., the Court below shall dispose of the same on merits and in accordance with law, after hearing both the parties, within a period of two months. In the meanwhile, E.P.No.105 of 1992 filed by the plaintiff shall be kept pending. This Civil Revision Petition is allowed accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

PJL

To

1. The Section Officer, (2 COPIES)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

2. The District Munsif,
Manapparai.

+1cc to Mr.G.Sridharan, Advocate in SR No.86147
+1cc to Mr.P.Vairava Sundaram, Advocate in SR NO.85992

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NM/SKN/SAR 2/11.10.18/2P/4C