



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.466 of 2013

and

M.P (MD) No.2 of 2013

1.Devasahayam Arulappa

2.Sheela

:Petitioners / Respondents

/ Respondents / Defendants

vs.

1.Sobhana Bai

2.Basil Christopher

3.Samuel Jacob

:Respondents / Petitioners

/ Petitioners / Plaintiffs

PRAYER: Civil Revision Petition filed under Article 115 of Code of Civil Procedure, to set aside the order dated 21.12.2012 passed in E.A.No.72 of 2012 in E.P.No.40 of 2011 in O.S.No.799 of 1994 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioners

:Mr.R.J.Karthick

For Respondents

:Mr.K.Sree Kumaran Nair

ORDER

This Civil Revision Petition is directed against the order passed in E.A.No.72 of 2012 in E.P.No.40 of 2011 in O.S.No.799 of 1994 by the learned Principal District Munsif Court, Nagercoil.

2.The respondents herein are the plaintiffs in the suit in O.S.No.799 of 1994 on the file of the Principal District Munsif Court, Nagercoil and the petitioners herein are the defendants in the suit. The suit was filed for declaration of plaintiffs' right over a 10"width pathway from plaint 'A' schedule property through the wall marked as 'AB' along with the western property of plaintiffs' 'B' schedule property giving access to plaintiff to the 'C' schedule property.

3.The suit was decreed and the respondents herein filed an execution petition in E.P.No.40 of 2011 in O.S.No.799 of 1994 under Order 21 Rule 32 of CPC to remove the stone wall ('AB' wall). The said execution petition was allowed by order dated 15.12.2011. The Executing Court appointed an Advocate Commissioner to remove the stone wall constructed on 'AB' point on over the 10" width pathway as per the decree of the Court.

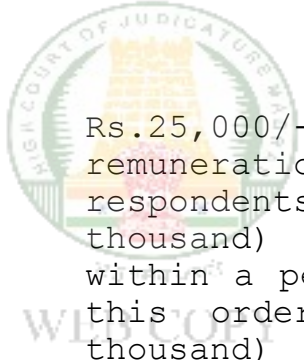


4. Thereafter, it is alleged that the Commissioner appointed by the Court could not demolish the wall as per the decree and therefore, the respondents herein filed an application in E.A.No.72 of 2012 in E.P.No.40 of 2011 in O.S.No.799 of 1994 for police protection to the Advocate Commissioner for executing the decree as per the order of the Court made in E.P.No.40 of 2011 in O.S.No.799 of 1994. This application was opposed by the revision petitioners only on the ground that the wall had already been removed and that therefore no direction is required. It was submitted that the decree in the suit stands completely discharged because of the removal of the wall in terms of the decree. The lower Court passed an order for removal of construction put up by the revision petitioners blocking 10" width and to remove any other construction within the 10" as per the decree. Aggrieved by the same, the above Civil Revision Petition is filed.

5. During the course of hearing, the learned Counsel for the revision petitioners reiterated that "AB" wall as per the decree has been demolished and removed and that therefore, the decree is fully discharged. However, this fact was disputed by the learned Counsel for the respondents. Hence, this Court, by order dated 14.07.2018, appointed an Advocate Commissioner to find out whether the 'AB' wall was demolished as per the decree in the suit in O.S.No.799 of 1994. Accordingly, the Advocate Commissioner appointed by this Court has filed a report today with a plan and photographs. In the report of the Advocate Commissioner, has stated that the 'AB' wall as per the decree in the suit in O.S.No.799 of 2014 on the file of the District Munsif Court, Nagercoild has been demolished and removed. The photograph submitted by the Advocate Commissioner indicates that the wall has been removed.

6. It is also reported by the Advocate Commissioner that the parties and their respective counsels agreed that the suit 'AB' wall has been removed in accordance with the decree. In such circumstances, this Court is of the view that the order passed in E.A.No.72 of 2012 in E.P.No.40 of 2011 in O.S.No.799 of 1994 on the file of the Principal District Munsif Court, Nagercoil is liable to be set aside and accordingly set aside and the execution petition in E.P.No.40 of 2011 in O.S.No.799 of 1994 stands closed as the decree has been discharged. Accordingly, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

7. The learned Advocate Commissioner has requested this Court to direct additional remuneration as he has taken a long trip for executing the warrant. The learned Counsel for the petitioners, however, submitted that the demolition of wall was disputed and that therefore, the Advocate Commissioner was required at the instance of respondents. Hence, he requested this Court to direct the respondents also to contribute for the additional remuneration. Having regard to the facts and circumstances of the case, the Advocate Commissioner is entitled to a further sum of



Rs.25,000/- (Rupees twenty five thousand) as additional remuneration. This Court direct both the petitioners as well as the respondents to pay jointly a sum of Rs.25,000/- (Rupees Twenty five thousand) to the Advocate Commissioner appointed by this Court within a period of two weeks from the date of receipt of a copy of this order. The said sum of Rs.25,000/- (Rupees twenty five thousand) shall be shared by the revision petitioners and the contesting respondents in equal proportion.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Munsif, Nagercoil.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

COPY TO:

Mr.R.Mathava Selvam,
(Ph.No.99448 98267)
7th Law Chamber,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.J.Karthick, Advocate SR.No. 74905

+1cc to M/S.K.Sree Kumaran Nair, Advocate SR.No. 74943

C.R.P. (NPD) (MD) No.466 of 2013
25.07.2018

cmr

JM/MMS/SAR 3/11.08.2018/3P/7C