



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 16.10.2019

CORAM

WEB COPY

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.858 of 2011

and

M.P. (MD) No.1 of 2011

1.P.Chinniah
2.A.Subbiah
3.V.R.Karuppiah
4.R.M.Muruges
5.R.S.P.Baskar

.. Petitioners/3rd Party

Vs.

1.Vasuki
2.V.Karuppiah
3.V.Lakshmanan Aasari
4.P.Subbiah

.. Respondents/Petitioner/
Plaintiff/Respondents

Prayer : This Civil revision petition is filed under Section 115 of Civil Procedure Code, to call for the records relating to the fair and decreetal order dated 22.03.2011 in E.A.No.21 of 2009 in E.P.No.74 of 2008 in O.S.No.77 of 1996 on the file of the Additional District Munsif, Karaikudi and to set aside the same.

For Petitioners : Mr.Vallinayagam, Senior Counsel
For Mr.J.Anandkumar

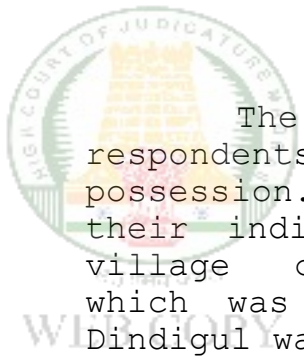
For 1st Respondent : Mr.R.Vijayakumar

For Respondents 2, 3, 4 : No Appearance

ORDER

The claimants who filed a petition under Section 47 of CPC, are the revision petitioners before this Court.

2.The facts in brief which are necessary to dispose of the above civil revision petition are as follows:



The first respondent herein had filed a suit against the respondents 2 to 4 and others for declaration and recovery of possession. The suit was filed against the defendants therein in their individual capacity and as representatives of the entire village of Melamanakudi village. The suit in O.S.No.77 of 1996 which was filed, on the file of the learned District Munsif, Dindigul was decreed on 29.11.2000. The decree reads as follows:

"1.Declared that the suit property belongs to the plaintiff and the defendants 1 to 5 are restrained from disturbing with the plaintiff's peaceful possession and enjoyment of the suit property.

2.That the defendants 1, 3 and 5 are directed to remove the encroachment made in the suit properties and handover vacant possession of the suit property to the plaintiff within two months time (I.e. Before 29.01.2001)

3.That if the defendants fail to do so the plaintiff is entitled to remove the encroachment at the cost of the defendants after two month time is over from the date of judgment.

4.That the defendants do pay the plaintiff the sum of Rs.643/- being the cost of the suit."

3.Thereafter, the plaintiff/first respondent herein sought to execute the said decree against the respondents 2 to 4 herein by removing the encroachment that have been put by them in the suit schedule property. The suit schedule property has been described as an extent of 0.92.0 ares comprised in survey No.1/3 of Melamanakudi village within four boundaries.

4.When the execution proceedings were filed, the claimants namely, revision petitioners herein, came forward with the claim under section 47 of CPC and contended that the decree would not bind them as they are not parties to the suit and that the defendants in the suit were not their representatives and not authorised to act on their behalf. They would further seek to have this decree cancelled and E.P.No.74 of 2008 to be dismissed and also to consider their respective claims. They also raised a plea that they and their predecessor in title have been in possession and enjoyment of the property for several decades.

5.The counter has been filed, wherein the plaintiff/first respondent herein would submit that the application under Section 47 of CPC was not maintainable under Section 47(3) of CPC and that apart, the petitioners were bound by the decree, since the suit has been initiated against the defendants in a representative capacity. Though such a detailed claim and counter had been filed, the learned District Munsif, Karur has dismissed the application and reading of



the said order does not reflect the reasoning behind the order. The order appears to be non speaking one.

6.On this sole ground, this Court of the view that the application namely, E.A.No.21 of 2009 in E.P.No.74 of 2008 should be remitted back to the Additional District Munsif Court, Karaikudi for fresh consideration and for passing detailed order.

7.Accordingly, Civil Revision Petition is allowed and E.A.No.21 of 2009 is remitted back to the Court for consideration. Considering the fact that the decree is of the year 2000 and the execution proceedings are of the year 2008, the learned Additional District Munsif shall proceed to hear and pass orders in the said application within a period of three months from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

The Additional District Munsif, Karaikudi.

+1 CC to M/s.J.ANAND KUMAR, Advocate SR-92424.

+1 CC to M/s.R.VIJAYA KUMAR, Advocate SR-92612.

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