



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2019

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WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.1210 of 2019
and
C.M.P. (MD) .No.6774 of 2019

1.S.Kalimuthu @ Valliammal

2.Karu.Sonaimuthu

... Petitioners/
Petitioners/Decree Holders/
Plaintiffs

Vs.

1.Jothiramalingam

2.Muthu @ Koolu

... Respondents /
Respondents/Judgment Debtors/
Defendants

PRAYER:- Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decreetal order dated 03.06.2019 passed in E.A.No.48 of 2018 in E.P.No.29 of 2017 in O.S.No.102 of 2009 by the District Munsif, Sivagangai.

For petitioners : Mr.V.Sitharanjandas

ORDER

This Civil Revision Petition has been filed by the petitioners challenging the order dated 03.06.2019 passed by the Court below in E.A.No.48 of 2018 in E.P.No.29 of 2017 in O.S.No.102 of 2009, whereby and whereunder the Court below has dismissed the petition filed by the petitioners seeking to incorporate the letters GHIJ and KLMNO in Ex.C2.

2. It is seen that the petitioners herein have filed the suit in O.S.No.102 of 2009 for declaration, permanent injunction and mandatory injunction for removing the encroached portion mentioned as GHIJ and KLMNO in the Advocate Commissioner's Plan. The trial Court dismissed the suit. Aggrieved by the same, the petitioners/plaintiffs filed an appeal suit in A.S.No.82 of 2013. The first appellate Court, after reappraising the oral and



documentary evidence, has decreed the suit as prayed and directed the respondents herein to remove the portion GHIJ and KLMNO mentioned in Advocate Commissioner's Plan within a period of two months. In order to execute the decree, the petitioners, thereafter, filed E.P.No.29 of 2017. During the pendency of the same, the petitioners filed E.A.No.48 of 2018 in E.P.No.29 of 2017 seeking to incorporate the letters GHIJ and KLMNO in Ex.C2, as if it was omitted to be mentioned in the same. The Court below has dismissed the said application as not maintainable holding that the petitioner has to approach the appellate Court, where the suit was decreed. Challenging the said order, the petitioner has filed this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Admittedly, the petitioner wants to incorporate the letters GHIJ and KLMNO in the Advocate Commissioner's Plan - Ex.C2. Though Ex.C2 was marked in the trial Court, the first appellate Court has reversed the finding of the trial Court and decreed the suit, relying on Ex.C2. The Executing Court cannot go beyond the decree and correct Ex.C2. Therefore, the Court below has held that the petitioner has to approach the first appellate Court for such relief. This Court does not find any reason to interfere with order passed by the Court below.

5. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The District Munsif, Sivagangai.

+1 CC to M/s.V.SITHARANJANDAS, Advocate (SR-78901[F] dated 31/07/2019)

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