

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1054 of 2014

C.V.Karunakaran (Deceased)

1.P.A.Karpagavalli

F.Nagoore (Died)

2.C.V.Ravishankar

3.C.K.Kirubhashankar

4.C.K.Prabhashankari

(LR's brought on record and Amended
as per Order in E.A.No.5144/11 dated
06.01.2012)

... Petitioners

Vs.

1.Avathar Kavur Virithi

2.Meera Begum

3.Musthafa

4.Majeetha Singh

5.Jashbeen Kavur

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition by setting aside the order and decretal order dated 19.07.2013 passed by the IX Assistant Judge City Civil

Court, Chennai in E.P.No.771 of 2010 in O.S.No.1309 of 1981.

For Petitioners : Mr.P.Sankaranarayanan

For Respondents : M/s.K.Bijai Sundar for
M/s.G.Jerimiah for R1,4 and R5
No appearance for R2 and 3

ORDER

This Civil Revision Petition has been filed by the Petitioners/Decree holders against the dismissal of the Execution Petition in E.P.No.771 of 2010 in O.S.No.1309 of 1981 on the file of the IX Assistant Judge, City Civil Court, Chennai dated 19.07.2013.

2.The petitioners herein had filed an Execution Petition in E.P.No.771 of 2010 to execute the decree for mandatory injunction. The learned IX Assistant Judge, City Civil Court, Chennai, by an order dated 19.07.2013 had dismissed the said Execution Petition. Feeling aggrieved, the petitioners/decreed holders have filed the present Civil Revision Petition.

3.Heard Mr.P.Sankaranarayanan, learned counsel for the petitioners and Mr.K.Bijai Sundar for Mr.G.Jerimiah learned counsel for

respondents 1,4 and 5.

4.The learned counsel for the petitioners has submitted that the Executing Court had dismissed the Execution Petition on the ground that the property mentioned in the Execution Petition does not tally with the property mentioned in the decree. He further submitted that during the pendency of the Execution Petition, the petitioners have filed amended copy of the decree, but without taking into consideration the said amended copy of the decree, the Executing Court had erroneously dismissed the said Execution Petition and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the Executing Court in the aforesaid Execution Petition and direct the Executing Court to proceed further in the said Execution Petition.

5.Per contra, the learned counsel for the respondents has submitted that the Executing Court had categorically stated in its order that the respondents/judgment debtors have filed written arguments on 27.06.2013 and thereafter, the matter was adjourned to 01.07.2013, 04.07.2013 and 09.07.2013 for submitting reply arguments on the side of the petitioners/deGREE holders, but the learned counsel for the

petitioners/decreed holders had not appeared and submitted his reply arguments with regard to the discrepancy of the property and hence, the Executing Court, after considering the available materials, had dismissed the said Execution Petition and in the said order, this Court need not interfere and therefore, he prayed to dismiss the Civil Revision Petition.

6.The learned counsel for the petitioners has filed a Memo, enclosing a certified copy of the Decree passed in O.S.No.1309 of 1981 on the file of the District Munsif, Poonamallee. A perusal of the said certified copy of the decree shows that the Plot number and R.S.Number were amended on 15.07.2008. Hence, this Court is inclined to remit the case to the Executing Court and the petitioners are directed to produce the said amended copy of the decree before the Executing Court and after considering the same, the Executing Court has to dispose of the Execution Petition, in accordance with law.

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7.In the result, this Civil Revision Petition is allowed and the order passed by the IX Assistant Judge, City Civil Court, Chennai in E.P.No.771 of 2010 in O.S.No.1309 of 1981 dated 19.07.2013 is set aside. The Executing Court is directed to give one more opportunity to

the petitioners/decreed holders to produce the amended copy of the decree and on production of the said decree, an opportunity to be given to the respondents for filing additional counter and thereafter, dispose of the Execution Petition, in accordance with law. No costs.

8. Registry is directed to return the amended certified copy of the decree filed by the petitioners to enable the Petitioners to file the same before the Executing Court.

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Index : Yes/No
Internet : Yes/No
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To

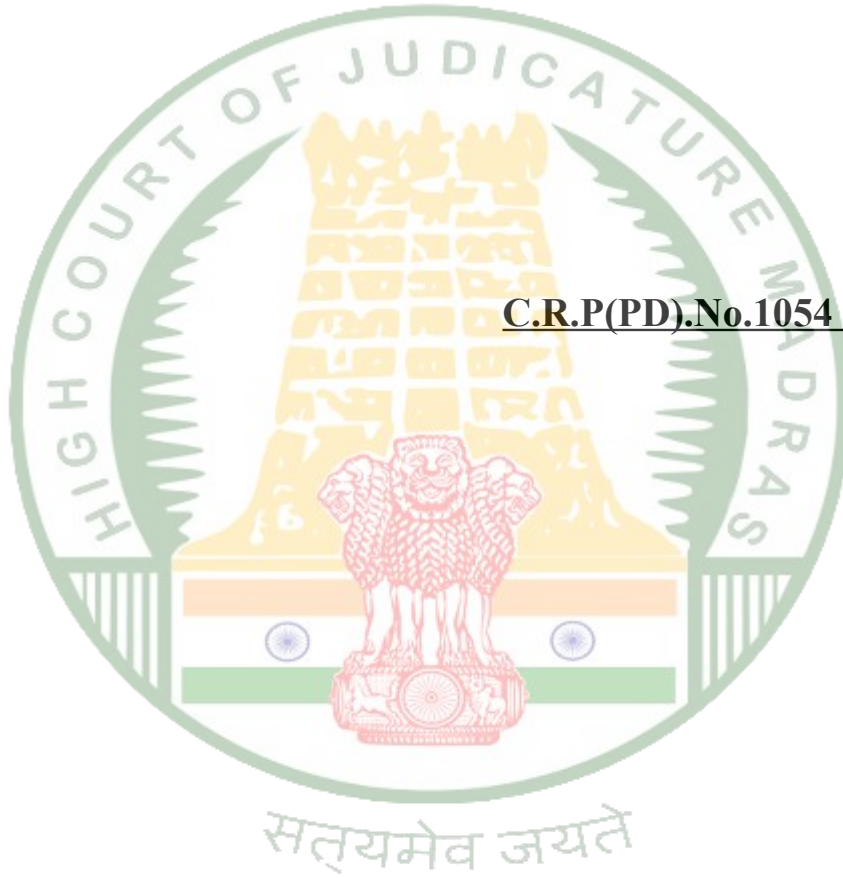
The IX Assistant Judge City Civil Court,
Chennai.

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P.RAJAMANICKAM.J.,

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