



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.02.2020

Delivered on : 28.05.2020

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THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(MD)No.35 of 2020

and

C.M.P.(MD)No.217 of 2020

Sundararajan

... Petitioner / Defendant

Vs.

Pushparani

... Respondent / Plaintiff

Prayer : This revision petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 10.12.2019 in E.A.No.97 of 2014 in E.P.No.26 of 2014 in O.S.No.382 of 2006 on the file of the Principal District Munsif Court, Padmanabapuram.

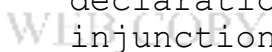
For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.C.Godwin

ORDER

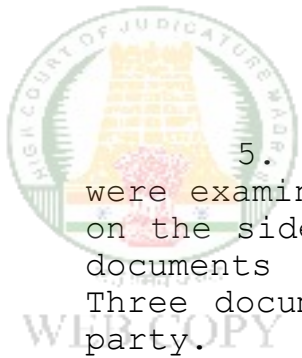
This Civil Revision Petition is filed against the order dated 10.12.2019 in E.A.No.97 of 2014 in E.P.No.26 of 2014 in O.S.No.382 of 2006 on the file of the Principal District Munsif Court, Padmanabapuram.

2. The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein / plaintiff filed a suit in O.S.No.382 of 2006, for declaration, title of possession and enjoyment and for mandatory injunction. The suit was decreed by the trial Court on 03.09.2009. To execute the decree, the respondent herein / plaintiff filed an Execution Petition in E.P.No.26 of 2014 and in that petition, the respondent herein / plaintiff filed an application in E.A.No.97 of 2014, for demolishing the construction put up in the suit property, which is shown as ABCFA line in Plan 'A' of the Commissioner Report, filed in O.S.No.382 of 2006. That E.A. petition was allowed by the trial Court. Against which, the revision petitioner /defendant preferred this Civil Revision Petition.



4. Brief substance of the counter in E.A.No.97 of 2014 is as follows:

<https://hcservices.ecberts.gov/hcservices/>



5. Before the trial Court, four witnesses [P.W.1 to P.W.4] were examined and twenty eight documents [Ex.P1 to P.28] were marked on the side of the petitioner. No witness was examined and Nineteen documents [Ex.R1 to R19] were marked on the side of the respondent. Three documents [Ex.X1 to X3] were marked on the side of the third party.

6. After considering both sides, the trial Court, allowed the E.A. petition. Against which, the revision petitioner / defendant, preferred this Civil Revision Petition, on the following grounds:

7. The order of the trial Court is contrary to law and the order is cryptic without any reasons, the decree is silent about the location of the property within the larger extent of Survey No.6/38 and the appointment of the Commissioner will lead to further complexity. The Execution Court failed to consider the two plans, showing two different measurements and the trial Court failed to consider that which of the two plans is correct. The Execution Court cannot go beyond the decree and assume any property as suit property without the property being clearly identified. The trial Court failed to consider that the respondent is not entitled to choose a plan according to his wish without being clearly defined in the decree and sought for appointment of a Commissioner to execute the decree as per Plan 'A' is nothing but malicious. The Execution Court has no right to either add or delete any portion of the decree. Without demarcating the encroached portion the respondent could not recover the property and the prayer in the E.A. petition is not in-consonance with the decree and prayed the E.A. petition to be dismissed.

8. On the side of the revision petitioner, it is stated that the suit was filed for a relief of declaration and for recovery of possession of 6 cents of land and the suit was decreed in favour of the respondent / plaintiff, but, the property was not clearly described in the suit. A Commissioner was appointed to visit the suit property and he filed two plans (Ex.C1 and C2). The measurement of the property in both the plans are different.

9. On the side of the revision petitioner, it is sated that in the decree no plan is annexed, there is no discussion by the trial Court as to the measurement in Exs.C1 and C2 in the judgment. But, E.P was filed to execute the decree on the basis of 'A' plan and on the basis of the Commissioner report. When the decree did not describe any plan, the E.P. based on A plan is an error. The decree holder has to get clarification, on that decree. There is a difference of 10 to 12 feet between both the plans regarding North and South measurements. No measurement is given in the plaint description of the property or in the decree. The decree has to be amended and the property has to be identified. The description of the property is questioned in the written statement itself. The



respondent can not choose the measurement which ever is beneficial to him.

10. On the side of the respondent, it is stated that the measurement of the property is 6 cents with specific boundaries. The description of the property in the decree and in the suit are the same. The Identity of the property is not questioned in the written statement, now only the revision petitioner has raised this issue and Ex.A1 was upheld up to the Second Appeal. All the points are already decided. Ex.B9 and B10 show that construction is going on. It is clear that the boundary stones are removed and some were broken and the suit in O.S.No.382 of 2006 attains finality.

11. On the side of the revision petitioner, it is stated that a portion of the building is alleged to have been within the suit property and that a decree must be specific and the property should be demarcated.

12. On the side of the respondent, it is stated that under Section 47 of the Code of Civil Procedure, the Execution Court is empowered to determine all questions relating to execution and satisfaction of the decree. It is stated that there was no partition between the owners of the property and that Kochappi Nadar has no right and that the decree holder has no right, by virtue of the gift deed alleged to have been executed in his favour.

13. On the side of the respondent, it is stated that already the suit was decreed, the First Appeal and the second appeal were also dismissed on 06.08.2013 and that the documents filed by the petitioner are subsequent to the decrees and they could not be considered.

14. The revision petitioner has failed upto the Second Appeal and he is now questioning the decree indirectly by filing the petition to declare the decree as inexecutable.

15. It is seen that in the suit and in the decree in O.S.No.382 of 2006, only boundaries are stated and not the specific measurements. A perusal of the E.P. petition shows that an Advocate has been appointed to demolish the construction made by the defendant, by measuring the suit property as per the measurement stated in plan 'A' of the Commissioner report in the suit. Execution Court cannot go beyond the degree, since there is no measurement given in the plaint or in the decree and since plan 'A' is not mentioned as "form part of the decree", plaintiff cannot insist upon the execution Court to measure the property on the basis of plan 'A' filed by the Commissioner. Hence, the execution Court is directed to give directions to the Advocate Commissioner to identify the suit property on the basis of the available title deeds and revenue records.



16. With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: With the consent of both side counsels the order is pronounced in the Open Court through Video conference on this 28-th day of May 2020.

To

1.The Principal District Munsif Court,
Padmanabapuram.

2.The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-12997[F] dated
01/06/2020)

Pre-delivery order made in
C.R.P.(MD)No.35 of 2020
28.05.2020

Ls

SDS (30.06.2020) 5P-5C