



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 438 of 2017
and C.M.P. (MD) No. 2152 of 2017

WEB COPY

1. Singararajan
2. Ponnamma ... Petitioners/Petitioners/Plaintiffs

vs.

1. Thankarajan
2. Sivarajan ... Respondents/Respondents/Defendants

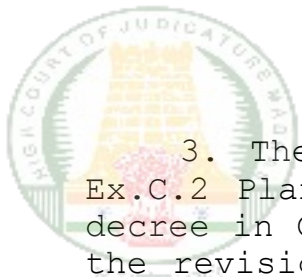
PRAYER : Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreetal Order, dated 05.10.2016 passed in E.P. No.59 of 2015 in O.S. No. 288 of 1999 on the file of the Principal District Munsif, Kuzhithurai, Kanuakumari District and allow the Civil Revision Petition.

For Petitioners : M/s. J. Anandhavalli
For Respondents : Mr.K. Sreekumaran Nair

ORDER

This petition has been filed to set aside the Fair and Decreetal Order, dated 05.10.2016 passed in E.P. No.59 of 2015 in O.S. No. 288 of 1999 on the file of the Principal District Munsif, Kuzhithurai, Kanuakumari District.

2. The learned counsel appearing for the revision petitioners would submit that the revision petitioners herein are plaintiffs in O.S. No. 288 of 1999 on the file of the I Additional District Munsif, Kuzhithurai, Kanyakumari District. He would further submit that the suit was filed for declaration of title and recovery of possession and demarcation and the suit was decreed in favour of the respondents herein and hence, the revision petitioners herein have preferred an appeal in A.S. No. 30 of 2005 on the file of the Subordinate Court, Kuzhithurai, Kanyakumari District and the said appeal was allowed on 09.09.2006 granting the relief of declaration. He would further submit that based on the Fair order and Decreetal order, dated 09.09.2006 in A.S. No.30 of 2006, the revision petitioners have filed E.P. No.4 of 2008 under Order XXI Rule 32 and Section 151 of Civil Procedure Code for appointment of Commissioner and the same was ordered and Advocate Commissioner has also appointed to demarcate the boundaries as per Ex.C.2. Aggrieved over the same, this Civil Revision Petition has been filed.



3. The learned counsel for the respondents would submit that Ex.C.2 Plan in O.S. No.288 of 1999 and the plan appended to Final decree in O.S. No. 1194 of 1969 are one and the same and therefore, the revision petitioners cannot now taken a different stand and if that stand is accepted it will be in derogation of the Judgment passed in O.S. No. 288 of 1999 and therefore, sought to demarcate as per Ex.C.2 plan.

4. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents and perused the material documents available on record.

5. On perusal of records, already boundaries were demarcated in O.S. No. 1194 of 1969 and the commissioner's plan was also enclosed with the final decree. As per paragraph No.12 of the Judgement in O.S. No. 288 of 1999, both parties were agreed the boundaries in Ex.A.15, i.e., commissioner's Plan and Final Decree in O.S. No.1194 of 1969 is also revealed that the boundaries should be fixed as per final decree in O.S. No.1194 of 1969. Therefore, the boundaries were already demarcated as per Ex.C.2 in O.S. No. 1194 of 1989. Hence, the order, dated 05.10.2016 in E.P. No.59 of 2015 in O.S. No. 288 of 1999 passed by the learned Principal District Munsif, Kuzhithurai, Kanuakumari District for appointment of Advocate Commissioner to fix the boundaries with regard to Ex.C.2 plan is irrelevant. The Execution Court cannot go beyond the decree.

6. In the result, the Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal District Munsif, Kuzhithurai, Kanuakumari District

2. The Section Officer, V.R.Section,

Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1 CC to M/s.J.ANANDHA VALLI, Advocate (SR-25503[F] dated 15/12/2020)

Order made in

C.R.P. (MD) No.438 of 2017

15.12.2020

SSS(CO)

<https://hcrs.court.gov.in/cases/5C>